

STAFFORD COUNTY PLANNING COMMISSION MINUTES

February 16, 2011

The meeting of the Stafford County Planning Commission of Wednesday, February 16, 2011, was called to order at 6:30 p.m. by Chairman Gordon Howard in the Board of Supervisors Chambers of the County Administrative Center.

MEMBERS PRESENT: Howard, Rhodes, Fields, Hazard, Mitchell, Kirkman and Hiron

MEMBERS ABSENT: None

STAFF PRESENT: Harvey, Smith, Stinnette, Baker, Doolittle, Ansong, Hudson and Hornung

DECLARATIONS OF DISQUALIFICATION

Mr. Howard: Are there any declarations of disqualification from anyone on anything that's on the agenda this evening? No? Okay, hearing none, I'd like to see if there's a motion to adopt the agenda as written and move forward with the meeting.

Mr. Rhodes: So moved Mr. Chairman.

Mr. Howard: Is there a second?

Mrs. Hazard: Second.

Mr. Howard: Any discussion? Hearing none I'll call for the vote. All those in favor of moving forward with tonight's agenda signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Ms. Kirkman: Aye.

Mr. Hiron: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 6-0. We're now into Unfinished Business which is item number 1 on the Rappahannock River Overlay which has been deferred. We're still awaiting information on that; is that correct Mr. Harvey? Is there any update to provide?

UNFINISHED BUSINESS

1. Rappahannock River Overlay District and Potomac River Overlay District (Referred back by Board of Supervisors) (**Time Limit: October 6, 2010**) (**History - Deferred at June 16, 2010 Meeting to August 18, 2010**) (**Deferred at July 21, 2010 Meeting to September 1, 2010**) (**Deferred at September 1, 2010 Meeting to October 6, 2010 Meeting**) (**Deferred - Requesting additional time from Board of Supervisors**)

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Mr. Harvey: I have no update Mr. Chairman.

Mr. Howard: Okay. So then we're on item 2 which is New Business. And this is Patriot Ridge preliminary subdivision which is a reconsideration of a previously denied preliminary subdivision plan for 16 family subdivision lots on private well and septic systems, zoned A-2, Rural Residential. We'll now hear from staff, Mr. Harvey?

NEW BUSINESS

2. SUB1000017; Patriot Ridge - Preliminary Subdivision Plan - A reconsideration of a previously denied preliminary subdivision plan for 16 single family residential lots on private well and septic systems, zoned A-2, Rural Residential, consisting of 23.12 acres located on the west side of William and Mary Lane, approximately 1,200 feet south of Decatur Road on Assessor's Parcels 31-67 and 31-68 within the Griffis-Widewater Election District. **(Time Limit: March 20, 2011)**

Mr. Harvey: Yes, Mr. Chairman. Natalie Doolittle will give the Commission a briefing.

Mr. Howard: Thank you. Mrs. Doolittle, good evening.

Mrs. Doolittle: Good evening Mr. Chairman and members of the Planning Commission. The preliminary plan application was denied at the January 5, 2011, Planning Commission meeting based on deficiencies in the following section on the Subdivision and Zoning Ordinances. Section 28-34, Purpose of Districts for A-2, Rural Residential, Section 22-118(4) (c) and (e), Water and Sewer, regarding on-site sewage disposal system minimum area and Section 22-1, Purpose. A letter was sent to the applicant stating that he could resubmit a modified plan with the following modifications or corrections that would permit approval of the plan. To increase the minimum lot size of all lots to three acres since none of the lots would be served by public sewer and/or water. Design all of the septic systems so that there is sufficient area and sufficient separation between the primary and reserve septic systems, such that if the primary system fails the reserve will not be impacted. Widen the streets from eighteen feet to twenty four feet and create a homeowners association for the collective maintenance of stormwater management features on individual lots or redesign the stormwater features to be solely within common area and maintained by a homeowners association. The applicant has submitted a revised preliminary plan which added or revised the following notes. All bio-retention facilities shall be owned and maintained by the homeowners association and no parking signs will be provided along Minerva Lane. Also the foot prints of the primary and reserve drainfields have been clarified on the plan however no changes have been made to the location or size of the drainfields.

Mr. Howard: Thank you. I'll bring it back to the Commission. Are there questions of Mrs. Doolittle or any staff on the issue before us?

Ms. Kirkman: Mr. Chair.

Mr. Howard: Ms. Kirkman.

Ms. Kirkman: I have questions.

Mr. Howard: Yes.

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Ms. Kirkman: I apologize in advance for what may seem like the repetitive nature for some of the questions I am going to be asking, but there are some things I do want to clearly establish for the public record. Regarding the Planning Commission in its motion to deny cited three sections of the Subdivision Ordinance and specifically identified mechanisms which needed...deficiencies that needed to be addressed. Did the applicant increase the minimum lot size of all lots to three acres?

Mrs. Doolittle: No.

Ms. Kirkman: So since we have Section 28-34, which states that A-2 is a one acre lot only when there is public water or sewer how did staff determine that this is in compliance with the subdivision ordinance...with the zoning ordinance?

Mr. Howard: Mrs. Doolittle, we can defer to Mr. Harvey or Mr. Smith on that question.

Mr. Harvey: Mr. Chairman and Ms. Kirkman, I will answer from planning staff's perspective. In looking at the provisions of that code section it is talking about the purpose of the zoning classification. The purpose of the zoning classification from the staff's perspective is advisory it is not regulatory. Regulatory aspects in the Ordinance are typically located in the specifics of the district uses as well as the standards for various different regulations such as special regulations or performance measures, so staff is always taken that view that is an advisory recommendation. Along the lines if someone was intending to rezone to the A-2 district that would be something that would be evaluated for making sure the requested zoning is consistent with the purpose of that zoning category.

Ms. Kirkman: So staff's position is that there are sections of the zoning ordinance which are guidance only and are in fact not statute?

Mr. Howard: Go ahead Mr. Harvey.

Mr. Harvey: From the staff perspective that narrative that talks about the purpose of the ordinance is a descriptive measure it is not necessarily a regulatory measure as far as how the zoning district is to be applied.

Ms. Kirkman: And can you explain how staff determines which part of the zoning ordinance is voluntary or guidance verses regulatory? Because my understanding was the entire zoning ordinance is prescriptive.

Mr. Howard: I am not sure that Mr. Harvey is indicating it is not prescriptive but Mr. Harvey if you want to answer, I have a...while you were talking...what I am hearing you say is and Mr. Smith you can certainly chime in, that there is nothing that requires or says that there is an affirmative requirement that you cannot be in A-2 if you don't have public water and public sewer. Am I fair in saying that? Is that your interpretation or is that...go ahead Mr. Smith.

Mr. Smith: Yes, Mr. Chairman that is my interpretation of this language.

Mr. Howard: Okay.

Mr. Smith: And in addition I would raise another concern that I have that Mr. Harvey has not spoken to yet. I agree with what Mr. Harvey has said and believe that his interpretation of the zoning ordinance is correct. Section 28-34 uses the language when public water or sewer are provided.

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Section 28-35, a more specific section that addresses the A-2 zoning district amongst other zoning districts uses the language where public water and sewer utilities may be provided. And generally a rule of statutory construction is that the more specific governs the more general unless there is express language indicating the contrary. And in this case I believe that 28-35 is the more specific provision of the zoning ordinance since that issue would govern and the language in that particular provision is may be provided.

Mr. Howard: Ms. Kirkman is pointing out there does seem to be on the surface some potential conflict. Is that correct?

Mr. Smith: Yes Mr. Chairman. I believe that there...these provisions are not entirely consistent.

Ms. Kirkman: And Mr. Chair I would like to point out that our Ordinance has a very specific statement in 28-6 regarding conflict of provisions which states if any portion of this chapter is in conflict with another portion of this chapter or another section of the Stafford County Code then the more restrictive provision shall prevail. Wouldn't that be the guiding principal here Mr. Smith?

Mr. Smith: I think that would have to be read in concert with the general rule of statutory construction that the more specific still prevails and in this case I don't think that 28-34 is read as the more restrictive because of the issues that have already been raised, that it is not a regulatory provision. I doesn't mean that is has no effect but it does not create an affirmative requirement that must be met.

Ms. Kirkman: That actually gets back to my original question, which was how does staff determine which parts of the zoning ordinance are regulatory and which parts are not?

Mr. Harvey: There are certain measures in the ordinance as it is constructed that are there to provide guidance and assistance on how the ordinance should be read and interpreted as well as administered. From the staff's perspective the title and the purpose of the zoning districts is there to describe what the zoning districts are intended to do. It does not necessarily give a regulation that if you meet these certain criteria you must do x, y and z. Again that is the staff's opinion on that issue.

Ms. Kirkman: But there is agreement on all parts that the applicant did not correct the deficiency as identified by the Planning Commission.

Mr. Harvey: Correct.

Ms. Kirkman: Okay regarding water and sewer, did the applicant make any changes to the design of the septic systems?

Mrs. Doolittle: No.

Ms. Kirkman: So the applicant did not correct that deficiency as identified by the Planning Commission.

Mrs. Doolittle: Correct.

Ms. Kirkman: Regarding the width of the streets, did the applicant make any changes to correct that deficiency?

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Mrs. Doolittle: They did not change the width of the streets, but they will provide no parking signs along the street.

Ms. Kirkman: So they did not correct that deficiency as identified by the Planning Commission.

Mrs. Doolittle: Correct.

Ms. Kirkman: Now I believe they have created an HOA, is that correct for the stormwater maintenance?

Mrs. Doolittle: They are going to, yes.

Ms. Kirkman: And do we have the covenants with that...for that?

Mrs. Doolittle: I don't believe so. I don't believe I got those...

Ms. Kirkman: Our subdivision ordinance requires that those covenants be submitted with the application. If they are not included in this application, this application is incomplete and should not be before us tonight.

Mrs. Doolittle: To my understanding that they are only required with cluster subdivisions.

Ms. Kirkman: No I believe we have a provision in our subdivision ordinance that says if there is an HOA the covenants need to be submitted with the preliminary subdivision application.

Mr. Howard: Mr. Harvey do you have...can you clarify that point?

Mr. Harvey: I can go and verify what the standard is in the ordinance.

Mr. Howard: Right.

Mr. Harvey: I know that to the process question, the state statute says that when a plan is resubmitted it needs to be presented to the Commission and the Commission take action within forty-five days. I doesn't speak to the resubmittal is a complete or incomplete request, so that is why staff sent this forward to the Commission as the first available meeting we had.

Mr. Howard: Right.

Ms. Kirkman: Actually let's move on to that particular issue. What the State statute, which is controlling here states is that that forty-five day timeframe only applies after the plan or plat has been modified corrected and resubmitted for approval. And we have already had staff's statement that on a number of issues the applicant did not correct the deficiencies as identified by the Planning Commission.

Mr. Howard: I think, I guess...here is where I would like some clarification because I also had an issue conceptually whether or not the A-1 or A-2 zoning was appropriate and then when I did my own homework on this it is really not within the Planning Commission purview to decide whether something is zoned properly or not properly. It is within our purview obviously to make sure that a preliminary subdivision plan that comes before us is in compliance with all of the ordinances. So

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when I spoke to Mr. Smith and Mr. Harvey after the last meeting and really try to understand it did appear there was some conflict within the code. And then Mr. Smith just gave us his legal opinion on the more restrictive would more than likely prevail in the more restrictive in this case is not indicating that this property is zoned incorrectly. And there is no requirement...there is no affirmative requirement saying that you cannot have or that you must have public water and sewer in A-2. And I think that is the conflict that you are referring to Ms. Kirkman, so I am not sure is that the only issue or are there other issues? You mentioned other issues that you didn't feel were completed as well, so I guess...

Ms. Kirkman: The two other...

Mr. Howard: I think one of the issues is someone's judgment and we can all have different opinions; that is fine, but it is someone's judgment on this is or is not correct. I don't want to speak for Mrs. Doolittle, but I am pretty sure that is why that is not on the table tonight. And I could be wrong. But what was the second issue?

Ms. Kirkman: Well I think Mr. Chairman, just as a point of order we probably should not enter into debate but be get clarifying information.

Mr. Howard: You made a statement I am trying to clarify your statement to see if your statement is accurate.

Ms. Kirkman: My statement was that the state statute...I am trying to understand why staff has brought this application forward to us tonight given that it appears that it may not comply with certain requirements of our subdivision ordinance regarding HOA covenants, given that the statute is...the state statute which is controlling is very clear that the forty day...forty-five day timeframe only applies when the applicant has corrected...

Mr. Howard: Corrected the state of the deficiencies, right.

Ms. Kirkman: ...the deficiencies and there were three that staff has acknowledged that the applicant did not correct. Lastly the point that is related to all of this is that according to Section 15.2-2259(d) that if the dispute is not...is regarding the interpretation or the application of the ordinance the proper venue to resolve that dispute is an appeal to the Circuit Court. So in other words the applicant can...according to the state statute it appears the applicant has the choice of either correcting the deficiencies as identified by the Planning Commission and resubmitting the plan or through an appeal to the Circuit Court challenging the Planning Commissions interpretation of the ordinance. In this instance the applicant has done neither of those things. In fact what they have done is said we don't agree with the Planning Commissions interpretation of the ordinance and we are not going to make the corrections.

Mr. Howard: Right, so point of order Ms. Kirkman, I was trying to clarify whether that statement is correct or not.

Ms. Kirkman: Yes.

Mr. Howard: I am not sure whether it is or isn't at this point. I certainly appreciate the effort and work that you have put into it. You have done a good job with your homework. I would ask that the County Attorney advise us on whether or not did we ask the applicant to perhaps do things that the county,

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after further review made a decision, maybe that is not within the purview of the Planning Commission to either ask for that or that is not how the interpretation of that particularly zoning ordinance exists so perhaps that is not the reason for denial in this particular case. I am not sure you want to answer that publically or not, but I think...

Mr. Smith: Well Mr. Chairman I think I will answer to this extent to say that I think staff is...has been reasonable and correct in using their own interpretation to accept the application and process it in good faith and provide it to the Planning Commission for its consideration and allow the Planning Commission to make the determination whether or not to approve or disapprove it.

Mr. Howard: Okay. Are there any other questions of staff?

Ms. Kirkman: Yes, has Mr. Harvey located that section regarding HOA covenants?

Mrs. Harvey: Ms. Kirkman, I am still looking through the code sections however when I go into the preliminary plan section there is a reference to private restrictions and agreements, but it specifies this chapter bears no relation to any private easement, covenant, agreement or restriction nor is the responsibility of enforcement of a private agreement, covenant, easement or restriction implied hereinto any public official with the exception of private streets and private access easements as provided by this chapter. And then it talks about when the provisions of this chapter are more restrictive than those required by private contractor provisions of the chapter shall control but I haven't seen any provisions specifically in the preliminary plan article of the subdivision ordinance. I am still continuing to read through the ordinance to see where covenants are referenced. I know they are referenced to some degree in cluster subdivisions but I am not through the code yet. So if you can give me a few minutes Mr. Chairman.

Mr. Howard: Sure. Thank you. We can.

Mr. Fields: Mr. Chairman?

Mr. Howard: Yes. Mr. Fields.

Mr. Fields: I am sort of...I mean this raises...I am sort of...and if I can throw in this question for Mr. Harvey and Mr. Smith.

Mr. Howard: Absolutely.

Mr. Fields: I am still a little...what this brings up and I still don't know that we have gotten a good answer but it seems to me...it makes me a little confused about what I had assumed was the authority of the Planning Commission. I mean we either...if we have the authority to...what is the...are there statutory boundaries to our authority to approve or deny a preliminary subdivision plan? Are we missing...am I missing something in my understanding of what our responsibility is? I mean we have that...is our authority other...beyond if we have decided these are the conditions and a majority of the Planning Commission is in agreement with that interpretation isn't the point of readdressing Ms. Kirkman's suggestion...I know some of the appeals actually go to the Board of Supervisors and some that go to the Circuit Court. Some perhaps maybe even go to the BZA. But isn't the appealing...isn't appealing to a subsequent body the decision of the Planning Commission the process for disagreeing with the Planning Commission's interpretation? Or are there other mechanisms that I am not aware of? How does an applicant formally protest the decision of the Planning Commission and they are

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under the Planning Commissions and it's act as a majority...with a majority vote setting these are the conditions we feel are required and the applicant certainly has the freedom to say I don't think the Planning Commission is coming up...I don't think that their thinking is necessarily correct. But what is the...isn't the only mechanism for that an appeal of that decision?

Mr. Smith: Yes Mr. Fields. Ultimately the appeal for this would go to the Circuit Court of Stafford County to determine if this is disapproved once again for any of the prior reasons or additional reasons whether or not the Planning Commission in this case the standard would be denied it properly based on the ordinance or acted arbitrarily and capriciously in denying the preliminary plan. In general the Planning Commission's duty as it goes to preliminary plans is to examine the subdivision ordinance and in it's reasonable interpretation determine whether the proposal before it meets the requirements of the subdivision ordinance. And ultimately that would be what the Circuit Court would review whether the Planning Commission was reasonable in its interpretation. It is often referred to as the ministerial standard, I think that my imply almost a rubber stamp and I don't want to imply that the Commission does not have discretion, but it is a more limited discretion than is provided to say the Board in some of its land use decisions.

Mr. Fields: Understood, but what I guess what I am a little uncomfortable with what seems to be transpiring here is that the appeal or the argument of that decision which seems to me to...the argument of the validity or accuracy of the Planning Commission's decision seems to me to be on the table in this evenings discussion in the resubmission of the preliminary plan and it seems to me that the argument of the validity of our collective decision on this belongs only in the Circuit Court not on the floor of the Planning Commission. Unless if we have said we rejected this plan for these specific reasons, you know all kinds of people may think that we were wrong in doing that. But it seems clear from what you have said and what it seems to be that I have always understood it to be that the only place that that is arguable is in an appeal to the Circuit Court. It seems that what we are doing now is we are saying...not criticizing staff at all but it seems that what is happening is that we are debating now the validity or the grounds or the process of that decision making that we used to make the denial. And I am not sure that that is legal or appropriate for the floor of a Planning Commission meeting on a resubmission. It is up to us to say we denied it for these reasons, we looked at the resubmission. Did they address those reasons? No. It is not suddenly...am I missing something that suddenly on the resubmission the entire rational of the majority vote is up for debate?

Mr. Howard: Mr. Smith you can answer that if you can.

Mr. Fields: I know it is kind of a long involved question but I am very concerned about that process wise.

Mr. Smith: Well in this situation Mr. Fields I suppose it is up to the will of the Commission to determine whether or not in its consideration this evening or in future meetings that this submission in their opinion does meet the requirements of the subdivision ordinance.

Ms. Kirkman: Mr. Chair.

Mr. Howard: Yes, Ms. Kirkman.

Ms. Kirkman: I guess Mr. Smith, my question is this. I am sure you are familiar with 15.2-2259 which is the state statute governing subdivisions and that statute clearly states the applicant can do one of two things upon denial. They can correct the items and resubmit or they can challenge the

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interpretation of the Planning Commission of the ordinance in Circuit Court. Could you please point out to me in that statute where it says the applicant has the ability to do what they are doing tonight which is to challenge the authority...challenge the Planning Commissions interpretation of the statute by resubmitting a plan that does not comply...does not correct the deficiencies.

Mr. Smith: Ms. Kirkman I think that is a determination for the Planning Commission to determine in this case whether they have corrected the deficiencies upon resubmission.

Mr. Howard: Right.

Ms. Kirkman: Well staff has already stated they haven't.

Mr. Smith: Yes and if the Commission agrees with that by only making the several modifications that they have or changes/corrections that they have that they have not submitted a corrected preliminary plan then if that is the will of the Commission I believe they would be disapproving the resubmission.

Ms. Kirkman: I think what I am trying to understand here is if we have the legal authority to say the interpretation was wrong. Because it does seem to lay out in the statute that the only authority to say that the interpretation was wrong is the Circuit Court.

Mr. Howard: I think...let me interject for a moment. I think Mr. Fields brought up a good point, I think Ms. Kirkman is also bringing up a good point. However I think both points are somewhat premature because A) we have not heard from the applicant again. B) I agree that staff is presenting this as though the deficiencies were corrected and that is why we started to get into a little discussion with staff to understand their interpretation of the corrected deficiencies or not corrected deficiencies. So to Mr. Smith's point the applicant is before us, the preliminary subdivision has been resubmitted, the clock starts, we have forty-five days. I don't know how this is going to end up but I know that we are making a lot of judgments and assessments. We could very well turn around and say you know what, these deficiencies have not been corrected we stand by our first ruling and we wish you well. I am not sure how it is going to end but I think we are having a lot of debate and discussion which is good, it's healthy, but at the end of the day I don't know that those conclusions would be correct at this point just because we have not followed this through.

Ms. Kirkman: Mr. Chair part of the reason why I am raising this distinction based on the state statute is the forty-five days applies according to the state statute when they correct the deficiencies.

Mr. Howard: I understand.

Mr. Rhodes: Mr. Chairman.

Mr. Howard: Yes, Mr. Rhodes.

Mr. Rhodes: I would just to clarify Ms. Kirkman, the last time we discussed this identified three citations out of the statute at which point I highlighted that I thought there was opinion being stated on two of them and there was only one that was valid and that was the reason that I was voting for. And that one is the 28-34 which has been the point of the initial discussion tonight.

Mr. Howard: Right.

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Mr. Rhodes: So I...if they, in my opinion and the one that I am concerned about, the 28-34, because I believe the others were more opinion verses specific identification of errors to be corrected. If the correction is bringing it back so that we found ourselves to be misinterpreting the application of 28-34, there could be in that vein a correction. So I am fine going forward here. Thank you Mr. Chairman.

Mr. Howard: Thank you Mr. Rhodes. I don't know if there is any...let's keep it to the questions. We can get into debate...or this can be deferred too. We can get into debate, if there are any other questions of staff this is a good time to ask those. Okay hearing none we can bring the applicant forward. Thank you

Ms. Karnes: Good evening Mr. Chairman, Planning Commissioners and County Staff. My name is Debrae Karnes with Liming and Healy and I am here representing the applicant. At your January meeting you turned down the preliminary plan and identified four issues that you asked to be addressed. And in the dialogue with the applicant, the Planning Commission stated that they wanted the issues either corrected or addressed. We have resubmitted a plan that has addressed all the four issues identified by the Planning Commission and I will briefly go over those. First and foremost the Planning Commission indicated that it questioned whether A-2 density could be provided when neither public water or public sewer was available. But if you read the Stafford County Ordinance completely, including the Subdivision Ordinance and the Utility Ordinance you will see that it very clearly identifies where public sewer is required and when it will not be provided. Also in our comprehensive plan we identify an Urban Services Area and an area where sewer will not be provided. In this case A-2 density is appropriate. The private septic system connection is in accordance with the counties ordinances and the reference to the goal that A-2 zoning only occur with either public water or sewer is available is only that, it is a goal to be reviewed when a new rezoning...or a new reclassification to the A-2 district is being reviewed. We submit and I think you have heard from staff and you have heard from the zoning...the planning director and the county attorney's office that they are in agreement that the A-2 language that you guy previously looked at is not a requirement of subdivisions with existing A-2 zoning. And we suggest that it is not characterized as a deficiency. I will move on. Another issue involved the adequacy and the capacity of the septic systems and whether in fact those septic systems met the state and local requirements for septic systems. We have reviewed the soil reports and met with the Health Department and they are here. They tell us that these septic systems as shown on the preliminary plan meet all of the requirements of the subdivision ordinance. The Planning Commission's job when reviewing subdivision plans is to make sure that each plan contains or meets the minimum county standards. And I submit that the septic fields like the other two issues meet the standards of the counties ordinances. Likewise, there was an issue concerning whether the road was adequately sized. The applicant had proposed an eighteen foot road. VDOT has reviewed this plan and in writing has confirmed that it meets VDOT standards. I am going to suggest that it goes beyond the Planning Commission's authority to impose their own interpretations of what is correct over the VDOT standards. And finally the setting up the homeowners association, as you recall the Planning Commission indicated concern that the stormwater management facilities were on individual homeowners lots and asked that a solution be achieved such as putting the facilities in the control of the HOA and the applicant has agreed to do that and has indicated by note on the plan that it will be done. When we talked to the planning office we were told that HOA documents were to be submitted during the construction plan review and that the only time HOA documents were reviewed during the preliminary plan was for a cluster plans. And I will tell you I have never seen HOA documents required at this stage, but I will be glad to defer to the Planning Director and his knowledge of the Zoning Ordinance. For all of those reasons the applicant has submitted a plan that meets and in some cases frankly exceeds the standards of the subdivision ordinance and we ask that the Planning Commission approve this. If there is still some lingering doubt about how the subdivision ordinance

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and the zoning ordinance are interpreted...if you guys still see there is a conflict, we suggest that we get the determination of the Planning Director and if necessary ask the BZA to interpret it. That is what the BZA is supposed to do, to interpret ambiguities in any of the ordinances that are before us tonight, particularly the Zoning Ordinance. I will be happy to answer any questions.

Mr. Howard: Thank you Ms. Karnes. I will bring it back to the Planning Commission. Are there questions for the applicant? Ms. Kirkman.

Ms. Kirkman: Oh well let's start with the HOA documents. I am surprised you are unfamiliar with your firm's submission of the six hundred and eighty-eight lot subdivision for Crow's Nest since they submitted HOA documents with that.

Ms. Karnes: Well.

Mr. Howard: Is there a question Ms. Kirkman? Let's keep it at questions.

Ms. Kirkman: You are right.

Mr. Howard: Thank you.

Ms. Kirkman: That was an observation. Mr. Harvey did you find something regarding that?

Mr. Harvey: Yes Ma'am. I was recalling what you had said earlier that we have had that with preliminary subdivision plans, but I could not find the reference. Now I have found it. Under Section 22-58, content, and that is in the Article dealing with preliminary plans, Article III division 2. 22-58 says the preliminary plan shall include the following, if you look down to sub-section 5 entitled land for public or common use. Further, sub-section A of that section 5 says proposed by the sub-divider all parcels of land intended to dedicated or reserved for public use or to be reserved in the deed for the common use of property owners in the subdivision with the proposed covenants and restrictions. So that would be something that would be part of the preliminary plan. I guess there may be some question as to how the all parcels of land intend to be dedicated is viewed because in this case this property has no separate open space parcels but there are easements for common consideration for stormwater management.

Mr. Howard: Go ahead Ms. Kirkman.

Ms. Kirkman: Thank you for that clarification Mr. Harvey. Also Ms. Karnes in a similar matter it's has already been determined by the Circuit Court of Stafford, in fact your firm represented the plaintiff in this case that...

Ms. Karnes: Sunshine Homes?

Ms. Kirkman: What is that?

Ms. Karnes: Sunshine Homes?

Mr. Howard: We should just keep it to the questions pertaining to...

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Ms. Kirkman: No what I was going to say was that at the Circuit Court your firm represented the plaintiff in that action has already determined that matters pertaining to subdivisions are not appealable to the BZA. Are you familiar with that ruling?

Ms. Karnes: I think we are here on the behalf of Sunshine Homes.

Ms. Kirkman: Right but you had suggested that the proper avenue for this to play out was through the BZA and I just wanted to know if you were familiar with that ruling of the Circuit Court.

Mr. Howard: Well yeah, we will keep it germane to the...

Ms. Kirkman: Well it...she...I am...

Mr. Howard: I understand, she...

Ms. Kirkman: She suggested it.

Mr. Howard: She did.

Ms. Kirkman: I just wanted to make sure she was familiar with that ruling.

Mr. Howard: She said if in her view if there was a conflict that the BZA could be a body that might resolve it. If we...

Ms. Kirkman: Right.

Mr. Howard: If we, if the Planning Commission had the desire to do that. She obviously...it is a good question. She does not have to answer it if she doesn't want to. She is here on behalf of an applicant, we ought to focus on...

Ms. Karnes: Well, Ms. Kirkman, I just...just to explain a little further. It is not an issue necessarily of an appeal of a Planning Commission decision. The BZA is authorized to review questions of interpretations of the Zoning Ordinance. And that is what I was stating.

Ms. Kirkman: And what I was asking is if you were familiar with the Circuit Courts ruling in December, oh I believe it was 2005, that jurisdiction the BZA does not apply when the question regarding the zoning matter pertains to a subdivision application.

Ms. Karnes: I would suggest to you that these are two different issues.

Mr. Howard: Okay, let's move on.

Ms. Kirkman: Alright. Well let me move on then. So just to clarify for the public record, you representing the applicant, the applicant's position is they did not need to correct the deficiency regarding A-2. But to follow what was suggested in the letter was to change the lots from one acre to three acres. Is that correct?

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Ms. Karnes: My client feels that the plan meets the minimum standards prescribed in local subdivision ordinance and therefore warrants approval.

Ms. Kirkman: For the public record did your...did your client make the correction in the letter?

Ms. Karnes: My client made sure that in his view everything was correct. You want me to use a word you are using and I am not going to use it. You have heard staff say that this plan as resubmitted meets all the requirements...

Mr. Howard: Right, this is all the debate that we are going to have. We are here to ask you questions and I think Ms. Kirkman has done that. I think you have answered them.

Ms. Kirkman: Actually Mr. Chair I think she has failed to answer yes or no...

Mr. Howard: That is fine.

Ms. Kirkman: ...about whether or not the corrections were made.

Mr. Howard: That is fine.

Ms. Kirkman: Now what you did state was that your belief was that the Planning Commission was making its own interpretation of the subdivision and zoning ordinance and you do understand the state statute says that that kind of dispute needs to be resolved in the Circuit Court. So my question to you is why is this not in the Circuit Court rather than before us tonight?

Ms. Karnes: And again we believe that this meets the minimum standards imposed by the subdivision ordinance.

Ms. Kirkman: Ah, Mr. Chair I don't have any further questions.

Mr. Howard: Thank you Ms. Kirkman. Are there any other questions of the applicant? Okay, thank you. Bring it back to the Planning Commission. Are there any other questions of any other Commissioners or points of clarification that any Commissioner has a question on?

Mr. Rhodes: Mr. Chairman.

Mr. Howard: Yes Mr. Rhodes.

Mr. Rhodes: A question for staff. Again my concern previously was the 28-34, but just to clarify because it was cited last time as an item, the 22-118(4)(c) which dealt with the drainfields and the reserve drainfields, I just want to confirm from staff's perspective that it meets the requirement associated with that section. This application does.

Mr. Howard: Mr. Harvey.

Mr. Harvey: Mr. Rhodes, staff has consulted with the Health Department in their review and they believe it complies with the ordinance requirements therefore staff is comfortable with the drainfields as proposed.

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Mr. Rhodes: Thank you for that confirmation and I guess the other one which in my opinion became more of a preference of opinion dealt with the road widths 22-1. And I understand the position that VDOT has approved them so I am okay with that. That is not to say that I think an eighteen foot wide road is anything we would want in any subdivision. It is not convenient, it's a pain. It will be hard to go through but they did approve it. So thank you Mr. Chair.

Mr. Howard: Thank you.

Ms. Kirkman: Mr. Chair since we do have Mr. Thompson here I do have one question I would like to ask him.

Mr. Howard: Absolutely. Mr. Thompson would you mind coming up to the podium and representing the Health Department. Thank you.

Mr. Thompson: Good evening.

Mr. Howard: Good evening.

Ms. Kirkman: Do you want to identify who you are for the record.

Mr. Thompson: My name is Tommy Thompson. I am the supervisor with the Stafford Health Department; 40 years of experience and I am here to answer any questions you may have about this subdivision. But first I guess the letter that we have written dated June the 10th states that all the lots do meet our state regulations. We don't have any questions.

Mr. Howard: Thank you Mr. Thompson. Ms. Kirkman, did you have a question for Mr. Thompson.

Ms. Kirkman: I do but also since you raise your letter that you wrote.

Mr. Thompson: Okay.

Ms. Kirkman: In umm, let's see the third paragraph ends with the statement that as a result this subdivision may contain lots that do not have approved sites for onsite sewage disposal systems. Could you please explain that language?

Mr. Thompson: Well I did not write this letter. This is a standard state letter that is written on all subdivisions. I think it is because the state does not do all the soil work for each lot we are kind of obligated to do a certain amount of soil work to verify that the soils in the subdivision are reflected on what they submit on paper. So being that the Health Department used to be the agency that issued the certification for the AOSE's now they are called OSE's and they are under DPOR. However the State Health Department still does check behind AOSE's. But since we don't do soils work on every lot we have to put this kind of clause in a letter like this.

Ms. Kirkman: So there is...since you have not done...basically your certification is that an AOSE has done the work.

Mr. Thompson: Right.

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Ms. Kirkman: And in particular I am particularly concerned about lot number 13, the reserve drainfield there relies on one line in the primary drainfield which is upslope from the reserve. Could you please explain to me how it would be possible that all of the area for the primary could become non-functional except for one line? Because they are saying that is going to be used for the reserve. So I really have a hard time understanding how that one line can be preserved when the entire primary fails.

Mr. Thompson: Let's say you have a failure.

Ms. Kirkman: Mm hmm.

Mr. Thompson: All of the lots in this subdivision have trenched drainfields. They are three feet wide; there is nine feet from the center of one trench to the center of the next trench. When there is a failure there is a certain amount of saturation that takes place but the State Health Department regulations do not require any separation between the primary and the reserve whether the reserve is downslope or upslope. At the last Planning Commission meeting, Danny Hatch which is an AOSE, explained and I would be happy to give some further examples that when a drainfield becomes saturated and you have a failure the owner of the house is under emergency pumping operations to pump their tank to let that drainfield dry out before any repair is necessary or able to be made. You are exactly correct a drainfield, once it fails it must be allowed to dry out so that digging can take place for the repair. The two examples I want to make to you, we have a number of drainfields that have been repaired by going beneath the existing drainfield. Of course the soils have to be suitable underneath, but the same policy applies. The owner must pump that septic tank, haul that waste until two weeks four weeks until that drainfield dries out. We have even had the pump truck stick his hose in the drainfield lines that are saturated and suck out that liquid so that the repair can take place. If the soils are suitable we have gone underneath. With nine foot...with the drainfields being on nine foot centers, there is six feet of soils in between each trench of undisturbed. We have repaired many drainfields by installing in between the lines. However when we are reviewing subdivision we don't consider the area beneath the drainfield or the area between the trenches as reserve area.

Ms. Kirkman: I believe reading through these forms and I think we already confirmed this that all of the septic fields here are going to have to be engineered which means the soils are not suitable, they are going to be bringing in the appropriate soils. So I assume that means the soils underneath are not appropriate. Is that correct?

Mr. Thompson: That is not a correct assumption to make.

Ms. Kirkman: Okay.

Mr. Thompson: The fact that some of the systems are engineered may mean that the soils may be fine but because of the requirements to have a certain amount of area available they may have had to have gone to these alternative systems with pretreatment which allow for smaller areas to be utilized. So to automatically assume that because they are going to alternative systems, don't make that assumption that the soils are not any good.

Ms. Kirkman: You referenced Mr. Hatch's presentation and what he said to us was that the house would have to go on pump and haul while the drainfield dried out. Is that essentially what you are saying?

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Mr. Thompson: Let's be very clear. You said that word pump and haul. I intentionally avoided that term. Emergency pump and haul, make this very clear, has nothing to do with the Board of Supervisors approving a house to go on permanent pump and haul.

Mr. Howard: With subsidized pump and haul.

Mr. Thompson: With subsidized pump and haul. I stayed away from that term. The citizen would be required to pump their septic tank on an emergency basis until such time that the drainfield dried out. That could be called pump and haul, but that is emergency. There is also permanent pump and haul which is a totally different issue. That is when the system has failed. The Health Department has to be contacted to go out to see if there is any chance to repair it. The private sector, the AOSE must go out and evaluate that lot to see if there is any chance for any type of onsite system. A discharging system is also considered so we look at all options before the citizen must go to permanent pump and haul and they have got to get that approved through the Board. So I hope I have cleared that up. Does anybody have any questions about pumping a septic tank when there is a failure?

Mr. Howard: Are there any other questions for Mr. Thompson regarding septic tanks?

Ms. Kirkman: So to...I...

Mr. Howard: I think that was a no, go ahead Ms. Kirkman.

Ms. Kirkman: I want to just make sure, so in your opinion if the entire primary drainfield fails and what's likely to be the status at the time of that failure of the one line in that area that is reserved for the reserve? Will it be usable at that point in time when the primary fails?

Mr. Thompson: My opinion...

Ms. Kirkman: Particularly given that it is down slope.

Mr. Thompson: For that liquid to travel through six feet of unsaturated soil to get saturated, I don't believe that is going to happen. I really don't

Ms. Kirkman: Thank you.

Mr. Thompson: Okay.

Mr. Howard: Thank you, thank you Mr. Thompson.

Mr. Thompson: Okay.

Mr. Howard: Okay are there any other questions that any other Commissioners have or need some clarification? No? Okay. I do want to read just for the people who might be listening. Section 28-34 which is the purpose of the districts, which is the original issue that I also had a concern with. And part of my concern was I wasn't as knowledgeable as I needed to be at that moment in time. But under 28-34 purpose of districts under the Virginia Code, it does say the following: In order to carry out or implement the purpose of objectives in this chapter the land use districts here in established shall have the following purposes respectively. A-3 Rural Residential, the purpose of the A-2 district is to provide a transition between rural and urban areas in residential areas as adjacent to growth areas which allow

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increased densities from the A-1 district when public water or sewer are provided. And then we heard Mr. Smith also cite, Mr. Smith you cited I think it was the section within the Stafford County.

Mr. Smith: 28-35.

Mr. Howard: 28-35, no that would still be the Virginia Code. Where you cited 28-35 and indicated that for the A-2 that the purpose of the A-2 district is to provide a transition between rural and urban areas where public water and sewer utilities may be provided. So it is not as prescriptive with the term may. And I believe that is what you were trying to point out. Is that correct?

Mr. Smith: Yes Mr. Chairman.

Mr. Howard: So that...there lies the conflict from your perspective. Okay.

Ms. Kirkman: And Mr. Chair I would also add to that that Mr. Smith has stated we have to go with what is more specific and we do have something very specific in our ordinance regarding conflict of provisions which states that the more restrictive provision shall prevail. And clearly in this instance one house per three acres is more restrictive than one house per one acre. I um...representing this district, I am going to make a motion to deny the subdivision plan primarily because it does not meet section 28-34, purposes of district, which clearly states that to...for the...and you have read it so I don't think I need to re-read it. But it clearly states that in order to get one house per one acre the area needs to be on public water or sewer and this area is not. It is also not adjacent to a growth area as specified in other parts of the ordinance. So that is my motion and if it is seconded, I will state my reasons for it.

Mr. Fields: Second.

Mr. Howard: Second by Mr. Fields. Ms. Kirkman you have the floor.

Ms. Kirkman: Sure. I want to continue on this, I think this is a very important point I think it is very clear. I've never heard this notion before that some parts of the Zoning Ordinance are guidance and not regulatory.

Mr. Howard: Ms. Kirkman we may have to suspend the conversation at 7:30.

Ms. Kirkman: Okay.

Mr. Howard: Just so you know.

Ms. Kirkman: Sure.

Mr. Howard: Okay.

Ms. Kirkman: I... so that is the first reason and I do believe the Zoning Ordinance is prescriptive. The second reason is the applicant and staff have clearly stated that the applicant did not make the corrections in the letter, in the written reason for the denial. It is the applicant's choice to do so or not do so, but the State Statute is very clear that if the dispute is regarding the interpretation of the ordinance the appropriate form for resolving that dispute is the Circuit Court. Not a submittal... a resubmittal of the plan that ignores the letter. Lastly I do want to point out that this section regarding

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A-2 came about as the 1978 rezoning, there was a massive overhaul of the Zoning Ordinance at that time and there were actually law suits filed in the Circuit Court regarding this particular provision and it was acknowledged at that time this was very clearly the intent of the A-2 district, that it was not to have one house per acre unless there was water or sewer. So there is actually some case law out there on that at our Circuit Court level.

Mr. Howard: Thank you. I am going to ask the other Commissioners just to hold off on discussion. And now I want to suspend the discussion period because of protocol based on the agenda that we adopted this evening. At 7:30 we typically will open up the meeting for public comment and public hearing. We actually had three public hearings scheduled. One has been postponed, but we do have two public hearings that have been advertised and by law would have to take place at this particular time. So I am going to suspend the conversation on the matter of the motion that is before us which is denial of subdivision 1000017, Patriot Ridge subdivision plan and open up the meeting this evening at 7:30 pm, which is now, for public comment. So, anyone wishing to address the Planning Commission on any matter that is not a public hearing. And so you know what is on the docket for the public hearings, there is a conditional use permit for Mohibi property and there is also an amendment to the Zoning Ordinance O10-64 which amends Section 28-25. So anyone wishing to address the Planning Commission may do so on anything they would like, except for those two issues that are before us for public hearing. Anyone wishing to address the Planning Commission may do so now by stepping forward and coming to the podium. Just state your name and address and as always you have three minutes to address the Planning Commission. And we look forward to your comments.

3. Discussion of Floor Area Ratios (FAR) in the Commercial and Industrial Zoning Districts
(Time Limit: May 3, 2011)

Discussed after public hearings.

7:30 P.M.

PUBLIC PRESENTATIONS

Mr. Waldowski: May I have the computer please?

Mr. Howard: Mr. Waldowski, just state your name and address and then they will get it going. We won't put the green light on until they are ready.

Mr. Waldowski: Okay, Paul Waldowski.

Mr. Howard: Thank you.

Mr. Waldowski: The Rock Hill District. Thank you. I would like to start today by bringing you up to date on the 2010 Census data. I am sure you all know it's one hundred twenty eight thousand nine hundred sixty one and I put this out there so any one who watches TV tomorrow can go find different aspects of the Census. Next slide please. What I did was I broke up things into threes just like I did with UDA's, I brought up 2010, 2000, 1999 and I tabled some numbers for you. Just to show you in the past twenty while I have been Rip Van Winkle the population has more than double. I only took one demographic. I took ages 25 to 44 because it was a pretty interesting statistic to see about one

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third of that census was in that age group. Now you all know we have different election districts and by law we are going to be re-doing the election districts and yesterday I brought it up to the Board of Supervisors because they like to divide numbers. So I divided for them what one hundred twenty eight thousand people would be under their control if there were six districts or seven. And that is not including the variance which I think will come into play this year. Next slide please. Now another table I brought here, I brought it for Planning Commissioners specifically because you deal with geographic areas not just election districts. And I have got nine geographic areas here and yesterday I was here and I realized there was five high schools that are in the Commonwealth 3A. I am glad there is no game tonight, tomorrow is the championship game between Mountain View and Stafford, off of Route 1, the best six dollars in town. And I just wanted to table all the different aspects that I believe are important for Planning Commissioner's to deal with from schools, bodies of water, transportation and we even have five zip codes. So maybe we ought to have five Board of Supervisors, hum. Next slide please. And then I brought along my little road picture because I always feel that whenever we deal with planning we forget the transportation aspect. Because as you know one of the reasons I come here is become I would love to see a vertical parking garage at the commuter parking lot maybe sometime in the next twenty years. And I will kind of leave it at that. I didn't review all the UDA aspects but I am still going to stick to my guns that we should only use the pilot UDA of Courthouse, learn our lessons and then maybe we should pick some new ones. I will see you in a couple of weeks. Thank you.

Mr. Howard: Thank you Mr. Waldowski. Anyone else wishing to address the Planning Commission may do so now by stepping forward. Seeing no one else advancing towards the podium, I will now close the public comment section of the meeting, public presentations, and open up the public hearings. The first public hearing this evening is on a conditional use permit 1000208...

Ms. Kirkman: Excuse me, Mr. Chair?

Mr. Howard: Yes.

Ms. Kirkman: Before moving, if we could just hear from Mr. Harvey about the reason for the postponement on the reclassification that was originally on our agenda for tonight?

Mr. Harvey: Certainly...

Mr. Howard: Actually, no. We're in public hearing; it's been postponed. We'll get to it after this public hearing since I called the public hearing. If that's okay, Ms. Kirkman, we'll just move along. And Mr. Harvey, if you can tell us after the public hearing, that would be great... the two public hearings that are here. So, I would ask staff to come forward and talk about the conditional use permit for Mohibi Property.

PUBLIC HEARINGS

4. RC1000338; Reclassification - Quantico Corporate Center - A proposed reclassification from R-1, Suburban Residential and M-1 Light Industrial to C-1, Community Commercial Zoning District to allow office, commercial, and retail uses. (Staff Paper 12-3, 12-4, 12-5, 13C-A, and 13C-B, consisting of 150 acres, located on the north side of Telegraph Road, and east side of Interstate 95 within the Griffis-Widewater Election District. (Time Limit: May 17, 2011)

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5. CUP1000208; Conditional Use Permit - Mohibi Property - A request for a Conditional Use Permit to allow motor vehicle sales in a B-2, Urban Commercial Zoning District on Assessor's Parcel 21-69, consisting of 0.534 acres, located on the west side of Jefferson Davis Highway, approximately 1,500 feet north of Telegraph Road within the Griffis-Widewater Election District. **(Time Limit: May 17, 2011)**

Mr. Harvey: Mr. Chairman, Amy Ansong will be making the presentation for staff.

Ms. Ansong: Good evening Mr. Chairman and members of the Planning Commission. I stand before you tonight to present the Mohibi Property. Computer please. I am presenting the Mohibi Property, CUP1000208. It is a conditional use permit. The applicant is Bari Mohibi. The parcel is 21-69. It's located on the west side of Jefferson Davis Highway. The area site is 0.534 acres and the current zoning is B-2, Urban Commercial. This request is a request to have a conditional use permit to allow motor vehicle sales in a B-2 Zoning District. Here you can see the existing zoning, which is B-2, for parcel 21-69. This is an aerial photograph of the site, of the Mohibi Property. Background; in fall 2008, a site plan was approved allowing the wholesale business of mopeds and bicycles. In spring 2010, a violation notice was issued due to the lack of a Certificate of Occupancy for the retail sales of motor vehicles. This is the current GDP for the Mohibi Property. You can see the Jefferson Davis Highway on the bottom, the building to the left and the parking to the right. Next, there will be a couple of site photos; this is what is currently on the site right now. Here's another site photo. Here's another photo of the site, and another photo. For the Mohibi Property, Conditional Use Permit 1000208, there are a couple of conditions that have been proposed. One is to restrict the parking of vehicles for sale, employee parking and customer parking. Another proposed condition is that there shall be no carnival style flags, banners, lights, balloons or windsocks used onsite. Also, there shall be no more vehicle display spaces on the site than the minimum number required by the Commonwealth of Virginia's Motor Vehicle Dealer Board. Another condition shall limit the number of entrances off of Route 1. Another condition shall restrict the loading and unloading of vehicles on Route 1. Also, a condition restricting service and retail sales of automobile parts, and also that onsite there will be replanting within the RPA in the areas shown on the GDP. When you read the Comprehensive Plan it states that in the suburban area designation new and used vehicle sales, including automobiles and boats, should be limited to the area along Jefferson Davis Highway near the intersection with Ramoth Church Road and near the intersection with Garrisonville Road. Due to that statement that I read, staff believes that the request is inconsistent with the Comprehensive Plan. As a result of that, there are a couple car places around the Mohibi Property. In terms of meeting what's stated in the Comprehensive Plan, staff felt that it was inconsistent with that and, as a result of that, staff is recommending denial of the application specified in Resolution 11-36. Any questions?

Mr. Howard: Are there questions of Commission of staff? Ms. Kirkman?

Ms. Kirkman: Yes, Mr. Chair. It's my district. Is there a definition in the Comprehensive Plan of near?

Ms. Ansong: No, not that I'm aware of, no.

Ms. Kirkman: And how far is this from the intersection?

Ms. Ansong: It is 1.3 miles away from Garrisonville intersection.

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Ms. Kirkman: And is this language that was added with the Comprehensive Plan that was adopted by the Board of Supervisors in December?

Ms. Ansong: That I'm not too sure about.

Mr. Howard: Mr. Harvey, can you answer that? I know the answer but I'd prefer Mr. Harvey to answer because I had asked that same question.

Mr. Harvey: Mr. Chairman and Ms. Kirkman, that was language that existed in the prior Comprehensive Plan. Previously it had been in the Urban Commercial area designation and now it's in the Suburban designation.

Ms. Kirkman: I'm not sure what you mean by that. You mean that it's new for it to be included in the Suburban designation?

Mr. Harvey: Yes, we no longer have an Urban Commercial designation in the Plan. That had been where it was previously located. Now it's in the Suburban area in the Comprehensive Plan. So that text in the Comprehensive Plan has been there for quite some time.

Ms. Kirkman: Was the applicant informed of this when they made their application?

Mr. Harvey: I don't recall if we had a specific discussion about the Comprehensive Plan. Most of the discussion had been with regard to zoning issues and processing the application.

Ms. Kirkman: So, what district was this in at the time they applied?

Mr. Harvey: The property is in the B-2 Urban Commercial Zoning District. At the time, the Comprehensive Plan recommended Urban Commercial uses for that property.

Ms. Kirkman: Because I was looking for this to see when the applicant might have... I mean, been informed of this potential issue. It seems like that should have been something addressed fairly early on. Can staff confirm that it was or was not... at what point...

Mr. Howard: Ms. Ansong, do you know if that was the conversation?

Ms. Ansong: I believe that the applicant had earlier meetings with other members of staff and I was not at those meetings, so I can't speak for them. When I did the staff report of course it came up so that's really all I know.

Ms. Kirkman: Okay. And then we're supposed to consider the impact on the adjacent properties and I had a question about that. There's a fairly large parcel that's directly adjacent to this that's owned by Tricord. Has that section of that... it's tax map number 21-65... has that parcel been developed?

Ms. Ansong: Is that part of the Port Aquia?

Ms. Kirkman: Yes.

Ms. Ansong: Yeah, the Port Aquia townhouses but...

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Ms. Kirkman: But that back section, has that been developed?

Ms. Ansong: Not that I'm aware of.

Mr. Harvey: No ma'am.

Ms. Kirkman: And are there any impediments to the development of that back section?

Mr. Harvey: I understand there's proffers that relate to access or a second access to that portion of that property that requires that access be provided out to Route 1 from a different location for an offsite property.

Ms. Kirkman: And do they have that access point at this point?

Mr. Harvey: I'm not aware of that being acquired by the owners of the Port Aquia project at this point in time.

Ms. Kirkman: So, will the decision regarding this affect the ability in any way to get that access?

Mr. Harvey: Not that I'm aware of.

Ms. Kirkman: Okay, thank you.

Mr. Howard: Are there any other questions for staff? Okay, now we can hear from the applicant. Is the applicant here?

Ms. Karnes: Good evening Mr. Chairman, Planning Commission members and staff. Again, my name is Debrarae Karnes; I work for Leming and Healy and I am here representing the applicant, whose name is Bari Mohibi. First of all, we were here a month ago. We had felt a need to discuss some of the conditions with staff and I want to tell you that staff has been very cooperative in working with us to define the conditions that should apply to protect the applicant and the County in case it is your decision to approve this case. This is a very small lot, a very old lot. This lot was used for commercial purposes as early as the 1970's and adjacent property owners remember it to have contained some form of a material graveyard/junkyard, that type of thing. And it was remembered as having hard-pack or gravel on the outdoor storage area, that some parts of which is RPA now. The applicant conducts a small business that includes the wholesale and retail sales of motor vehicles. It's a very small operation, unlike say your typical dealership that has a lot of inventory and depends on a lot of drive-by traffic and customers to review the site. This business has, what, a maximum of ten vehicles stored on the site and reports approximately fifteen sales a month. Of the fifteen sales, Bari Mohibi tells me that two-thirds of those sales result in customer visits to the site. There are two big issues in this case that have been identified by staff. The first one is the Comprehensive Plan; the second one is what conditions are appropriate to protect the existing RPA. And I would like to discuss the Comprehensive Plan first. As staff told you, there is language in the Comprehensive Plan that talks about the preferred locations of automobile sales. And if we could put on the computer, I'd like you to look at the exact language. And we'll go over it; "Vehicle sales are highway-oriented businesses and should be limited to major arterials, at or near major intersections. In the Suburban Area designation, new and used vehicle sales, including automobiles and boats, should be limited to the area along Jefferson Davis Highway near the intersection with Ramoth Church Road; and near the intersection with Garrisonville Road." And we could leave that on there for a minute, I want to point your attention to the fact that

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this is talking about they're classifying vehicle sales as highway-oriented businesses; in other words, businesses that generate a lot of vehicle trips and therefore need to be located at major arterials at or near major intersections. So, first of all, I don't think this language applies to such a small operation as Mr. Mohibi's, with less than fifteen visitors or sales per month. But even if it would, I'm going to direct you to the second part of this which talks about how used vehicle sales should be limited to the area along Jefferson Davis Highway near its intersection with Garrisonville Road. One point three miles is not far especially when you take a look at all the other existing development on that stretch of Route 1 north. There are at least four or five different sales businesses located near or further than the 1.3 miles that Mr. Mohibi's property is located from the intersection. So I'm going to suggest, number one, that this provision is not applicable to his business for either because it is near the intersection or it doesn't generate the intensive traffic that normal vehicle sales places do. Now, someone asked the question... they asked when Mr. Mohibi was made aware of this provision which, by the way, as staff has told you certainly was in the older Comprehensive Plan. Now, there were a series of meetings between staff and that would include Jeff Harvey, case planners, the engineers and either J. R. Tyler or Clark Leming. Everybody I've talked to says that the Comprehensive Plan issue was never mentioned. The first time I heard about it was two or three days before I think the staff report was issued when they let me know this was a main issue. I don't think it's applicable, but also, furthermore, I think we need to look at an issue of fundamental fairness. This is an existing business; he did come in to the County to work with the County. I don't think the Comprehensive Plan issue is the issue that should determine approval or denial of this application. Now, on some of the other issues, last go round someone said "wait a minute; the business started by selling wholesale motor cars. Okay, how did it get to used car sales?" The applicant misinterpreted the extent of his approval. First of all, let's be clear... it's up to individual businesses to comply with the law and to find out what permits they need to have before they open. No question. But I'm going to suggest to you what the real purpose of planning is, okay? And the real purpose of planning is to guide future development and to make sure that current development, within the constraints of law, meet the rules and regulations of the state and the County. When Mr. Mohibi was notified that he needed a CUP, he proceeded to come in and meet with the County and make sure that he was in full compliance. This has included redesigning his site. The existing site contains an area of RPA that is covered by hardpan, in other words, gravel. Most of that area pre-existed... that was there before Mr. Mohibi purchased the property and apparently has been there for some time. The southern part of that area was put in hardpan more recently. Mr. Mohibi has worked with staff to agree to design his site so that any area put in hardpan within the last year will be replanted pursuant to County approved plans. In addition, he is restoring to a grassed landscaped area a portion of the hardpan that was there years before he even took possession of the property. So he is substantially improving this property. I calculate... and you know, percentages are crazy because it's always a percentage of what... but I calculate that the amount of hardpan or gravel area being reclaimed from an existing impervious area is 44%. So this site is being improved substantially. I think there were questions at the previous meeting about how stormwater management was being handled here. And, if you've got follow-up questions on that, I have the engineer here; he can address that. But, my bottom line is this... Mr. Mohibi has an existing business and he's here to make everything meet County requirements. He's been willing to meet with staff throughout this whole process; he'd be interested in hearing your suggestions. But this is a low intensity use on an existing commercial corridor. And I would like to think, you know, the genius of planning again... it's easy to plan, maybe, a green fields that has perfect soils, wonderful landscaping and flat land. It's much more difficult when it's a developed site. That's why there are special provisions for sites labeled redevelopment areas. And we're here to work with you to achieve compliance with the code and, therefore, although I'll be happy to answer any questions, I ask that you approve this case.

Mr. Howard: Thank you Ms. Karnes. Are there any questions for the applicant? Mrs. Hazard?

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Mrs. Hazard: Yes. When did Mr. Mohibi purchase this property? Or has it been... we've sort of discussed that but I don't see it as much in the staff report of when he acquired this property.

Ms. Karnes: I want to check; I believe it's 1995. I'm sorry, 2005? Yeah, 2005.

Mrs. Hazard: So, Mr. Mohibi was the one who got the site plan approved to conduct the wholesale business of mopeds and bicycles.

Ms. Karnes: And his father.

Mrs. Hazard: Okay. I mean, I have to be honest... it is difficult for me that a year and a half later we have a huge, in my opinion, violation of something.

Mr. Howard: We're in questioning period, Mrs. Hazard. But we'll have public hearing right after this and then (inaudible).

Mrs. Hazard: Okay.

Mr. Howard: If there are questions of the applicant, we can... Ms. Kirkman?

Ms. Kirkman: If staff needs to also... On the plan there's a 12 by 25 foot loading space; is that there to meet any requirements?

Ms. Karnes: The parking requirements in the Zoning Ordinance require the parking space. We'd even talked about asking the planning office to get rid of that because there's no...

Ms. Kirkman: This says loading space, not parking space.

Ms. Karnes: Yes Ms. Kirkman. The parking standards require a certain percentage of loading spaces in addition to parking spaces, you know, for either vehicle display or customer/staff parking.

Ms. Kirkman: And that area, and there's a 20 foot width area in front of the parking spaces. Mr. Harvey, that cannot be... that would not qualify as the loading area?

Mr. Harvey: Ms. Kirkman, the Zoning Ordinance specifies that you have a certain number of loading spaces by types of use. In this case, we're looking at an office use, so they would be required to have the loading space. The loading space has to be outside of a designated travel lane, so it cannot block a travel lane.

Ms. Kirkman: Okay. And that area in front of the steps could not qualify?

Mr. Harvey: That's something we would have to look at... because there was some question about how close that building was in relation to the right-of-way and whether they could make a travel lane work or a parking space work.

Ms. Kirkman: Oh, okay. Thank you; that answered by question.

Mr. Howard: Thank you. Any additional questions of the applicant? Yes, Mr. Hirons?

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Mr. Hirons: Can you tell me in general or as specific if you know, what was the language of the approval that he misinterpreted?

Ms. Karnes: I'm not looking at it so hold me to specifics, but as part of his state regulatory application, he had to come down and have the zoning office sign off on the fact that such a use was permitted in the zoning district. And, at some point on the document, the words motor vehicles were used. And so he assumed that since the state folks do not differentiate, the County didn't. And that's... as it turns out, that clearly was an assumption he should not have made.

Mr. Hirons: Right. I have a second question of if this CUP is approved, would the applicant be agreeable to an additional condition of not allowing, or is there anything that currently prohibits, raised vehicles for display? You know how many of these small lots would typically have small ramps and they'll put cars up on it.

Ms. Karnes: He would have no problems with that.

Mr. Hirons: Thank you.

Mr. Howard: Ms. Kirkman?

Ms. Kirkman: Would the applicant... the primary concern I have about vehicles on this lot is the fact that it's located within the RPA and spillage of oil and other contaminants. Would the applicant be willing to agree that there won't be maintenance performed on the cars at this location?

Ms. Karnes: Yeah, it's already a condition but just to clarify...

Ms. Kirkman: I don't remember seeing that as a condition.

Ms. Karnes: There is no maintenance that occurs on the lot.

Ms. Kirkman: So that would include things like changing oil?

Ms. Karnes: Changing oil, car washes, nothing like that.

Ms. Kirkman: Ms. Hudson, I see you shaking your head. I just want to make sure that that's the position of the Zoning Administrator? Okay, thank you.

Mr. Howard: Any other questions for the applicant? Okay, hearing none I will now open up the public hearing. Anyone wishing to address the Planning Commission on the matter before us, which is a Conditional Use Permit, the operation of this business which is on Route 1 may do so by stepping up to the podium. State your name and address and you have three minutes to address the Planning Commission. And again, we don't necessarily respond to you but we certainly take your comments to heart and we'll listen to what you have to say and absolutely consider that as we deliberate the issue before us. Anyone wishing to come forward may do so now.

Mr. Waldowski: Paul Waldowski. I brought the definition of motor vehicle from the Wikipedia today because I was here a month ago. "A motor vehicle is a wheeled vehicle whose propulsion is provided by an engine or motor. The internal combustion engine is the most common motor choice, although electric motors or other types are sometimes used. Motor vehicles or road vehicles typically run on

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public roads.” This is a small businessman and a moped is a motor vehicle. I don’t care what definition you use, I strongly favor this CUP. This is an existing business, as Ms. Karnes had pointed out, and the Comprehensive Plan we all know... when was it last revised? In the 20th century. So, if you’re going to make a decision to a small businessman based off the 20th century, we are in the second year of the second decade of the 21st century and I don’t see how we can take a definition that’s out there and say that the state says one thing and the County means another thing. And, all I can say is I think this man has done due diligence to come in after the fact and do the right thing. And what really disturbs me is you’re trying to make it sound like he doesn’t understand what the word motor vehicle is. But mopeds do fit that aspect. And we have people all in this County who don’t get building permits and they have to come in after the fact and they’re given the aspect. And this is an existing business that meets every criteria and I urge you to get one of those seven-zero votes. Thank you.

Mr. Howard: Thank you. Anyone else wishing to address the Planning Commission on this matter before us which is the CUP for Mohibi Property may do so by stepping forward to the podium. Seeing no one else advancing towards the podium, I will now close public comments for this public hearing and bring it back to the Planning Commission. Ms. Kirkman?

Ms. Kirkman: Yes, Mr. Chair, I want to say my primary concern when this first came before us is we did not have a GDP that actually reflected what the applicant was going to do. We now have that and I feel like my primary concern in that respect has been addressed. I think this diagram we have of pre and post development conditions lays out very clearly the information we were looking for. And with that in mind I’m going to make a motion to recommend approval of R11-35 with the additional condition as suggested by Mr. Hirons, which was no display of vehicles on raised ramps.

Mr. Fields: Second.

Mr. Howard: Okay, Ms. Kirkman, you have the floor if you want to comment on it.

Ms. Kirkman: I want to say, regarding the staff’s recommendation of denial, first off we’ve been told over and over the Comprehensive Plan is a guide and not prescriptive. There was also a decision to make a change from some earlier drafts so that things would be should rather than shall which I think makes it even more of a guidance. And lastly, there has been no definition of near. And, as the applicant did point out, this was probably really geared to the large car dealerships rather than the small businesses like this. So I just don’t think that this situation applies to that language in the Comprehensive Plan.

Mr. Howard: Thank you. Mr. Fields, you have the second chance for comments since you seconded the motion.

Mr. Fields: Thank you. No, I have nothing to add.

Mr. Howard: Okay, Mrs. Hazard?

Mrs. Hazard: I guess where I would start is I do have concerns that there has been an approved use on it that... and I know that accidents do happen, but that does give me concern that it was pointed out based on a violation notice and not, of course, that the applicant willingly came in and noticed this. With that being said, I do see that there are... it appears that the RPA is being preserved and increased and made better. I don’t like to reward these but I will ultimately vote in favor of it, however, I really

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do want to make sure that the conditions are understood by the applicant that they need to be followed. So, with that, that's my comments.

Mr. Howard: Thank you. Mr. Rhodes? No comments? Mr. Mitchell? No comments?

Ms. Kirkman: Mr. Chair, I just want to make sure from staff that the complaint of violation was regarding the occupancy permit rather than the use, is that correct?

Mr. Harvey: Mr. Chairman, Ms. Kirkman, the violation was cited for an occupancy permit, for not having the appropriate one, not that they weren't there lawfully. They have a lawful use but what was going on with the sales was not permitted lawfully.

Ms. Kirkman: Okay; I just wanted to make sure I had the correct (inaudible).

Mr. Howard: Right. Mr. Hirons?

Mr. Hirons: I don't think we're going to actually have a 7-0 vote; I'm actually going to oppose this approval because, as Ms. Kirkman points out, the Comprehensive Plan is a guide and I'm going to use it as guidance here. I think the intention of the statement within the Comprehensive Plan is to keep car dealerships of all sizes in certain areas. I think it's good for the state, for the County, I think it's good for the public safety. So, for that reason, I'm going to accept staff's recommendation of denial of this application.

Mr. Howard: Thank you. I'm not going to comment at this point. Any other comments? Nope? Okay, I'll now call for the vote. All those in favor of the motion on the table which is to approve the Conditional Use Permit of Mohibi Property made by Ms. Kirkman and seconded by Mr. Fields signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Howard: Opposed nay?

Mr. Hirons: Nay.

Mr. Howard: Nay. The motion carries 5-2. Thank you. We now are on to amending the Zoning Ordinance, proposed Ordinance O10-64 which amends Section 28-25, Definitions of Specific Terms for the Zoning Ordinance. This amendment defines residential facility when licensed by the Department of Behavioral Health and Development Services and when licensed by the Department of Social Services. We will now hear from staff.

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6. Amendment to Zoning Ordinance - Proposed Ordinance O10-64 amends Section 28-25, "Definitions of Specific Terms", of the Zoning Ordinance. This amendment defines "residential facility" when licensed by the Department of Behavioral Health and Development Services and when licensed by the Department of Social Services. **(Time Limit: March 15, 2011)**

Mr. Harvey: Mr. Chairman, please recognize Ms. Hudson for the presentation.

Mr. Howard: Thank you.

Ms. Hudson: Good evening Chair, members of the Planning Commission. I really have nothing else... nothing new to say to you, just to remind you that the General Assembly amended the Virginia Code Section 15.2-2291(a) in 2010, amending the definition of residential facility when licensed by the Department of Behavioral Health and Development Services and when licensed by the Department of Social Services. The change to add these definitions into the Zoning Ordinance of the County would make our Zoning Ordinance consistent with the Virginia Code, that's why we asked that this be done.

Mr. Howard: Does the Commission feel that that was adequate information? Because it is a public hearing; I'm not sure, but I know you covered high level, Ms. Hudson, of what had talked about before. Alright, are there any questions of staff?

Ms. Kirkman: Mr. Chair, (inaudible – microphone not on).

Mr. Howard: Well, they probably should.

Mr. Harvey: Mr. Chairman, I will go ahead and read the Ordinance provision. The proposed Ordinance...

Mr. Howard: Do we happen to have it on a slide, we can throw it on there for the people at home watching? If we don't, that's fine.

Mr. Harvey: No, Mr. Chairman, we do not have it on a slide. The proposed Ordinance O10-64 would amend Section 28-25, Definitions of specific terms by creating two new definitions in the Zoning Ordinance. The first definition, "Residential Facility, Health Department Licenses means a facility in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more resident counselors or other staff persons, considered as residential occupancy by a single family. For the purposes of this definition, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Virginia Code § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this definition, residential facility means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to the Virginia Code." And then we have the definition of Residential Facility, Social Services Licensed which means "a facility in which no more than eight aged, infirm, or disabled persons reside, with one or more resident counselors or other staff persons, considered as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this definition, residential facility means any assisted living facility or residential facility in which aged, infirm, or disabled persons reside with one or more resident counselors or other staff persons and for which the

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Department of Social Services is the licensing authority pursuant to the Virginia Code.” In other words, these are facilities that are regulated by the State Health Department and the Department of Social Services, but they will look and act like a single-family home and they are treated as such for County purposes. We do not regulate them any different than a single-family home.

Mr. Howard: Thank you. Are there any questions of staff? Hearing none I will now open up the public hearing. Anyone wishing to address the Planning Commission on the matter before us may do so by stepping to the podium. We just ask that you state your name and address, and you have three minutes to address us on the information that we just discussed about this Ordinance. Seeing no one advancing towards the podium, I will now close the public hearing, or the public comment portion of the public hearing, and bring it back to the Planning Commission for discussion. Is there discussion of the Commissioners on the Ordinance that is before us?

Mr. Fields: First we need a motion, don't we?

Mr. Howard: Well, we will but if there are any questions...

Mr. Fields: Questions, okay.

Mr. Howard: No questions? Okay. We do need a motion if we want to advance this.

Mr. Mitchell: Mr. Chairman, I make a motion for Ordinance O10-64, an Ordinance to amend and reordain Stafford County Code Section 28-25, Definitions of Specific Terms.

Mr. Howard: So, you're making a motion... you're recommending to approve or...?

Mr. Mitchell: Approval Mr. Chairman.

Mr. Howard: Is there a second?

Mr. Rhodes: Second.

Mr. Howard: Okay, we're in discussion. Anyone want to initiate the discussion on this? No? I guess my comment would be that this, again, is really being done to bring the County within the State Code and that's the rationale behind this change. Hearing no other comments or anyone signaling I will now call for the vote. All those in favor of Mr. Mitchell's motion which is approving, or recommending approval for proposed Ordinance O10-64 signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

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Mr. Howard: Aye. Opposed nay? The motion carries 7-0. We're now back to an item that we had postponed until after the public hearings had concluded which that is now the case.

Ms. Kirkman: Mr. Chair?

Mr. Howard: Yes.

Ms. Kirkman: Before we move onto that, could we hear the reason for the postponement of the first public hearing?

Mr. Howard: Yes. I'm sorry Ms. Kirkman; thank you. Mr. Harvey, can you explain the postponement of the Quantico Corporate Center public hearing?

Mr. Harvey: Yes, Mr. Chairman. It was postponed at the applicant's request and staff's suggestion. The applicant, as part of his application, has submitted a Traffic Impact Analysis that is currently under review by VDOT. The application is complete and the applicant wanted to move forward to public hearing; however, VDOT has not completed the review of the traffic analysis and staff had recommended to them that they consider postponing the public hearing until we have VDOT comments that could be considered at the public hearing.

Mr. Howard: Thank you. Any other questions Ms. Kirkman?

Ms. Kirkman: Their statutory timeframe is around VDOT's review of the TIAs. Where is VDOT in regard to those timeframes?

Mr. Harvey: It's my understanding that VDOT is still within its allowed time to review. They have indicated that they will have the review done soon but it's not yet complete.

Ms. Kirkman: Okay, thank you.

Mr. Howard: Thank you. Mr. Harvey, just for the record for those who may be watching or interested in this, the applicant would again have to follow the same process and procedures in terms of public notification, is that correct?

Mr. Harvey: Yes, Mr. Chairman. For any public hearing we advertise, we send notices to adjoining property owners, as well as owners across the street, and the County staff posts signs along the public street frontage, as well as a notice in the paper.

Mr. Howard: Great, thank you. Okay, now we're back to an item that we had postponed that a motion was made for denial of Patriot Ridge Preliminary Subdivision Plan by Ms. Kirkman, it was seconded by Mr. Fields. Ms. Kirkman was just concluding her comments and the reason again for that postponement on that particular item was due to the schedule of the public hearings. Ms. Kirkman, I think you had concluded but, just in case you hadn't...

Ms. Kirkman: Well, I wondered just to... if it made sense for me to restate the reasons.

Mr. Howard: Absolutely.

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Ms. Kirkman: And that is that the applicant did not correct the deficiencies as identified in the letter that was sent to them. Of most concern is the fact that the applicant did not in any way address the issue regarding A-2 zoning where only one house per acre is allowed when there is public water or public sewer. The second reason was I felt like this was the wrong form for the applicant to be addressing a dispute regarding interpretation of the ordinance; that the appropriate form for that is the Circuit Court. And... there's a third reason. Can Mrs. Stinnette read that back?

Mr. Howard: Mrs. Stinnette is going through her notes.

Ms. Kirkman: And then lastly I do want to again reiterate my concerns, particularly regarding lot 13 and the reserve drainfield; that it's really relying on one line in a primary drainfield which we've heard if it goes down could be down for some unspecified period of time. So I do feel like there's some possibility that the entire reserve drainfield will not be available as needed.

Mr. Howard: Thank you.

Mr. Fields: Mr. Chairman?

Mr. Howard: Yes, Mr. Fields.

Mr. Fields: Those reasons certainly I concur with. I want to add that I'm in the process of this it's not only recent for a motion but as I kind of stated earlier I'll be succinct but I want to state that I'm very disturbed about the way in which this process evolved where essentially Ms. Karnes, though she was making a very eloquent defense of the client's position, that would have been a tremendous defense at the appropriate place which was the Circuit Court. I don't like the precedent that's being established here at all that instead of the appeal to the Circuit Court, which is defined by the code as the proper form to debate the Planning Commission's reasoning and rationale and implementation of the law that we had an occurrence tonight where we spent a good chunk of time with the applicant and various people questioning the Planning Commission, the Planning Commission debating and essentially functioning as an appeal without actually going through the nature of the proper channels of the appeal. That sets a precedent that every Planning Commission decision is negotiable with the Planning Commission. That's not to say that we're inflexible or mean spirited or anything else like that, but there is a process. And the reason the process is there is that's what's fair and transparent for the citizens; remembering it's not the seven of us that we are attempting to discharge here, it's the interest of all 128,000 citizens of Stafford County. And as such, that decision carries weight and is not something that we're not just in an argument with seven of us versus however many people of the applicants and their attorneys they can muster. And that's kind of what was occurring tonight and I don't think that's fair to the public, and it's not fair to us and it's really ultimately not fair to the applicant or to the whole group of people whom may be applicants because then it means the people that are able to somehow make a persuasive case at a given point in time can subvert the process of appeal as it's defined in the code. Thank you.

Mr. Howard: Thank you Mr. Fields.

Ms. Kirkman: Mr. Chair, I did remember the third point. The third point was when this particular language regarding A-2 was passed in 1978, it was litigated in the Circuit Court at that time. So, the intent was clear at the time the language was passed.

Mr. Howard: I think you commented you felt there was case law out there, right? Okay.

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Ms. Kirkman: Well, Circuit Court law.

Mr. Howard: Yeah, right. Mrs. Hazard? Comments?

Mrs. Hazard: Not yet.

Mr. Howard: Not yet? I'll come back. Mr. Hirons?

Mr. Hirons: No, I have no comments at this time.

Mr. Howard: Mr. Mitchell?

Mr. Mitchell: None.

Mr. Howard: Alright, Mr. Rhodes?

Mr. Rhodes: Yes, Mr. Chairman. At this point personally, I'm at a position where I would vote no on the motion that's on the floor given that, again, I voted no last time based on the 28-34. We have had our attorney opine on that and on the interpretation of what was the stricter interpretation, stricter interpretation being the section of the ordinance that had greater specificity and that that was the one that should be deferred to which changed the bases and therefore the applicant came back and addressed that in my opinion. But we have a couple members here who make a point that maybe it merits a little further consideration or confirmation from our attorney on the point of should this even be here based on their stated point. And for that actually I would... I'd actually like to move to postpone the motion until the second to get a deliberated confirmed opinion by our attorney on the propriety of this being voted on by us at this point. And then we would execute the vote at that time.

Mr. Howard: Is there a second?

Mrs. Hazard: Second.

Mr. Howard: Discussion? Mr. Rhodes?

Mr. Rhodes: None further; thank you Mr. Chairman.

Mr. Howard: Mrs. Hazard?

Mrs. Hazard: I believe Mr. Rhodes has stated it. I too would like further clarification, specific clarification of whether we should be voting as well. I believe valid points have been raised and I think that any precedent we set is certainly going forward, that I would prefer to have consultation with our legal counsel about that point. And if we are not able to do that this evening and give sufficient time to our counsel to advise us, I would prefer to have that time than to move forward and regret it later. Thank you.

Mr. Howard: Thank you. Ms. Kirkman, go ahead.

Ms. Kirkman: Mr. Chair, I'm certainly willing to support the motion to defer while we get additional legal advice on this matter.

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Mr. Howard: Alright. I'm of the same vein at this point. Mr. Fields, I was going to let you go next since you were the seconder of the first motion.

Mr. Fields: Well, since that's Ms. Kirkman's motion in her district, if she's okay with that then I'm okay with that.

Mr. Howard: Alright. I'll call for the vote after my comments. I think that's a prudent thing to do at this point, just so we have a better understanding. And I think all points were very good points to bring up this evening by all the Commissioners and I appreciate your professionalism with that as well. I will now call for the vote which is to postpone the motion on the table until the very next meeting I believe you said, which was the... 2nd...

Mr. Rhodes: Yes, the 2nd of March I believe it is.

Mr. Howard: ... to give the Planning Commission time to confer, you stated specifically legal advice on the matter, right?

Mr. Rhodes: Yes, confirm the propriety of the vote of the motion.

Mr. Howard: All those in favor of the motion on the table of Mr. Rhodes signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay? The motion carried 7-0. That item is postponed until next meeting. Okay, we are now up to the Planning Director's Report? Oh, number 3. Who could forget the Floor Area Ratio, the FAR. Discussion of the floor area ratios in the commercial and industrial zoning districts; we have until May 3rd. Mrs. Hornung?

***3. Discussion of Floor Area Ratios (FAR) in the Commercial and Industrial Zoning Districts
(Time Limit: May 3, 2011)***

Mrs. Hornung: Good evening Mr. Chairman, members of the Commission. The ordinance you have before you is the Floor Area Ratio Ordinance which was referred by Resolution R11-54 on February 1st to the Planning Commission. Basically, what the Board would like the Planning Commission to look at is the business, commercial and industrial districts in our ordinance and to look at revising those floor area ratios to a less restrictive, which means the number would be increased but the restriction is less. The floor area ratio is the ratio, the gross area of a building in square footage compared to the size of the property on which the building is located. This is a measure of intensity of development on the area... on the site, excuse me. It represents a mathematical formula of dividing

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the building area in square feet by the acres in square feet and expresses a percentage of the building space or land area. It's also used in zoning to limit the amount of construction in a certain area. This floor area ratio includes actually all the impervious surfaces as it's compared to the site, but it also includes the square footage of the building whether it's a one-story or a multi-story building. You have a chart that's attached that details the ratios for adjacent localities to the north and south in which it details how the FAR is less restrictive than Stafford County's. Just as an example, one developer in the Quantico Corporate Center would need nine acres to meet a certain floor area ratio and there might be some difficulty in getting that floor area ratio for a hotel unless maybe the floor area ratio was less restrictive and then could use six acres versus nine acres. That's just a rough estimate but we can, in your discussion, discuss examples if you'd like. The concerns for the FAR have been a discussion point for the Board's Community and Economic Development Committee by increasing the FAR into the recommendations of the Economic Development 10-Point Plan. This ordinance, O11-10, would actually change the FAR requirements for commercial and industrial zonings in the zoning districts and would be possibly similar to the adjacent counties. Ordinance O11-10, which is attached, shows the existing FAR in Stafford County with proposed changes that are examples less restrictive. Now these numbers are not recommended specifically by anybody in particular, but it was just random numbers to show you what those FAR ratios could be if Stafford adopted a number other than what is existing. So that would be up to the Planning Commission to decide how less restrictive they want to go in the commercial or industrial zoning districts.

Ms. Kirkman: Wait, could we get clarification on that because we have an ordinance that was sent to us by the Board that specifies those new floor area ratios.

Mrs. Hornung: That is correct. But also, in the ordinance, it does say that the Planning Commission has the authority or ability to change it and make changes as they deem necessary. There had to be a number placed on that for an example and I think the numbers, for the most part, are the most less restrictive in comparison to the other localities, meaning Prince William and Spotsylvania. But in that ordinance there is that statement that allows you the flexibility to change it as you feel what is the will of the Planning Commission.

Ms. Kirkman: Thank you.

Mr. Howard: Thank you.

Mrs. Hornung: Yes, sure.

Mr. Howard: And then we had also asked for someone from the Economic Development to be here.

Mrs. Hornung: That is correct. Mr. Brad Johnson from Economic Development is present to be able to give the developers' point of view and businesses that his office has been in touch with and how our existing floor area ratios affect positively or negatively with their development proposals.

Mr. Howard: Right, because that was one of the comments that were made when this was introduced to us I think at the last meeting that came up.

Ms. Kirkman: Before he comes up I have some questions for Mrs. Hornung.

Mr. Howard: Yes, sure. Are you done Mrs. Hornung?

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Mrs. Hornung: No sir.

Mr. Howard: Okay, keep going and then we have some questions for you and then we'll bring Mr. Johnson up. When he saw he was item number 3, he probably felt real good about that and that has not turned out that was unfortunately.

Mrs. Hornung: Now, at the Planning Commission's February 2nd meeting staff was requested to compare parking with floor area ratio. And parking requirements are based on land use category and... I'm sorry. Parking requirements are based on the land use category and depending what the land use is will determine what the parking requirements are. For example, a hotel it is one parking space required for one rental unit. But in a retail business, and if I'm correct in remembering, the parking requirement might be four spaces per thousand square feet. So, it's a little bit different. In some uses it's based on the square footage of the building. And what happens is the engineer will look at the total area of the site and what the requirements are in the Zoning Ordinance; floor area ratio, open space, setbacks, parking requirements, landscaping requirements. And what they will do is they will work with the numbers to figure out what is their maximum floor area ratio; basically, what is the maximum coverage of the site that they can develop. And then through that they will figure out not only based on the use and the square footage what the parking space allowances must be and then from that determine how they're going to develop that site by taking into consideration parking requirements, the minimum required and the landscaping requirements, the minimum required, in addition to the building setbacks. So there's a lot of variables that are taken into account and I believe what they look at first is the floor area ratio is the most important number so they know what the coverage is. And the coverage meaning the impervious surface on that property, and that will include not only the structures but the paved areas for parking and/or access isles or roadways that are on the site and then look at what their landscaping requirements are. For example, in B-2 your FAR is .4 which means 40% of the site. So if you take a 100,000 square foot area of a parcel, then you know 40,000 square feet is your maximum coverage that you could have. So you either have a square footage of a building that might be, for sake of argument, 10,000 square feet and four stories or 40,000 square feet and one story. But that's not realistic because you have to take into consideration the parking and the access isles and those other items that are required to be impervious surfaces; sidewalk, curb and gutter, that kind of thing. So they'll look at the coverage of the site and then subtract out the paved areas and then decide what kind of building is the best kind of building that they can build for the use that they're allowed to use. And in a B-2 you have a number of uses; not only permitted by-right but also by Conditional Use Permit. Also, if you have any other questions I would be happy to answer them and Mr. Johnson is also here if you have any questions.

Mr. Howard: Great. I think Ms. Kirkman had some questions for you Mrs. Hornung.

Ms. Kirkman: I wanted to understand what you mean when you said that what's in the ordinance is the least restrictive.

Mrs. Hornung: No, maybe I misspoke. The requirements that are in the ordinance for floor area ratio, that is actually a maximum number. But for parking, that is a minimum parking requirement. Our open space is a minimum percentage of the site that needs to have open space. So, typically or frequently the developer they might have a more restrictive floor area ratio which the number is less than what our requirement is. So if our requirement in B-2 is .4, 40% of the site to be impervious, they might only have 30% of the site impervious. But in open space 25% of the site is the minimum that you must provide but sometimes they'll provide 26% or they might go up. So depending on the

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requirement, some requirements in our ordinance are the minimums yet there are other requirements in the ordinance that are maximums. Does that explain it?

Ms. Kirkman: I think so. In the example of floor area ratio that you provided in our packets, is that how we are interpreting floor area ratio now?

Mr. Howard: There are a few examples I thought, Ms. Kirkman, the one that I looked at is on attachment 2... is that the one you're asking about?

Ms. Kirkman: Yes. That was the only one that I saw that actually defined (inaudible).

Mr. Howard: And then there were other tables that had different information. But you're right; this is the one example.

Ms. Kirkman: Is that how we interpret floor area ratio now?

Mrs. Hornung: Yes. It was the best graphical explanation I could find that was easier to explain, in addition to looking at the square footage of the site and then the coverage... and then you divide.

Ms. Kirkman: So this is how we're doing it now?

Mrs. Hornung: Well, this would be one example but...

Ms. Kirkman: No, there's like one... like what is the way that we're calculating floor area ratio now, when we get a plan in?

Mrs. Hornung: We look at the coverage of the site... Well, we're looking at the numbers that are provided in the Zoning Ordinance and the engineer provides the graphical explanation. They'll say the site is 100,000 square feet, the floor area ratio is .4, so 40,000 square feet should be the coverage. And we check their numbers. And by looking at the total impervious surface that they provide a whole number for, or they provide a number for, then you divide that impervious surface number by the square footage of that site. And that's how you get the percentage of FAR. And then if it's .41 then it exceeds our maximum requirement and they'd either need to come before the Board and Planning Commission for a Conditional Use Permit or they would have to revise those numbers to be at .4 or less, and that is meaning in the numerical designation.

Mr. Harvey: Mr. Chairman, I can read the definitions in the ordinance if that would help the Commission.

Ms. Kirkman: It would because, if I'm understanding Mrs. Hornung correctly, that seems to be something a little bit different than the example that we've been given.

Mr. Harvey: The definition of floor area ratio in our Zoning Ordinance says "The total floor area of a building or buildings on a lot divided by the gross area of the lot or site."

Ms. Kirkman: And when we count the floor area, do we just... so, in this example it gives for example if it's a two-story building, if it's a three-story building, if it's a four-story building. So if it's a three-story building, are we counting the floor area of each of those three stories?

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Mr. Harvey: Yes. And I can read the definition of gross floor area if you'd like.

Ms. Kirkman: Okay.

Mr. Harvey: Gross floor area is "The sum of the gross horizontal areas of each story of all buildings on a lot or site measured by the exterior walls or from the center line of party walls."

Ms. Kirkman: Perfect. That's helpful, thank you. And then the numbers that were plugged into the ordinance... where did those numbers come from?

Mrs. Hornung: Those numbers were arbitrary in a sense to give you an idea of what the floor area ratio could be in those districts. And that was basically taken from Prince William and Spotsylvania County. Some of the FARs for either county may be the same or more restrictive than Stafford. But since the Board wanted the Planning Commission to look at the floor area ratios in a less restrictive comparison, the numbers numerically were increased to give you an idea of what...

Ms. Kirkman: So, you just used that word less restrictive again.

Mrs. Hornung: Right.

Ms. Kirkman: You mean... what do you mean when you say the Board wanted us to look at this in a less restrictive light?

Mrs. Hornung: Well, right now the floor area ratio let's say for B-2 is .4. That means 40% of the site cannot... not more than 40% of the site cannot be impervious. I think I said that correctly. If you were to look at a less re...

Ms. Kirkman: Yeah, it's because you keep using the word impervious.

Mr. Fields: The impervious cover versus the combined floor area of all the stories of a building.

Mrs. Hornung: I'm sorry, yes. The combined stories of the building and the impervious area; I'm sorry.

Mr. Fields: Oh, so if you have... so the straightforward example like in number 2 doesn't apply. It's actually not just the building; if you have a one acre parcel and you want to get... oh, I shouldn't have used acres, now I've got to do multiple...

Mrs. Hornung: Use 100,000 square feet, that's easier.

Mr. Fields: I'm sunk already. One hundred thousand square feet and you wanted to put... so you could get 40,000... a four-story building with four 10,000 square foot floors on it. But what you're saying is that's not the whole picture. You also have to calculate the impervious area. So you couldn't get a four-story building with 10,000 square foot floors because you would assume there's no parking or no travel lanes.

Mrs. Hornung: Correct. Unless you had a parking deck within that four-story building.

Ms. Kirkman: Could we get confirmation from Mr. Harvey on that?

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Mr. Harvey: Mr. Chairman, Ms. Kirkman, I think we're talking about two issues at the same time. You have the floor area for a building and the floor area ratio on the lot. We're also talking about the practicality of can you meet your maximum floor area given your parking requirements and your other requirements on site to contribute that impervious areas. For instance, the higher your FAR the more prone you are to have parking inside the building like in a parking deck because of the amount of land you have to pick up for parking because you have more square footage in the building. I guess part of the confusion too is in terms I think Mrs. Hornung is trying to say with restrictiveness or unrestrictiveness of the ordinance is sort of inverse to our common sense with regard to the increase in the floor area. The ordinance is becoming less restrictive as you increase floor area because you're allowing people to build more on the site, so it's getting more liberal and less restrictive than our current ordinance currently is.

Ms. Kirkman: But, just to clarify, floor area ratio does not include additional impervious surface area. That's a consideration in developing the site but it's not part of the definition of floor area.

Mr. Harvey: Correct. Floor area is simply a ratio of the building square footage to the square footage of the lot.

Ms. Kirkman: And when staff is using less restrictive, what they really mean is increasing the floor area ratio.

Mr. Harvey: Yes. In other words, the Board wants the Commission to consider increasing the floor area ratios for our commercial industrial zones before they feel that one, we're at a competitive disadvantage and two, they don't meet the requirements of the UDAs that are in the Comprehensive Plan because, for the most part, our commercial zone the maximum FAR is the minimum allowed in the UDAs under the legislation. So those were two factors the Board wanted the Commission to consider.

Ms. Kirkman: And could I ask a question about that statement that they don't meet the UDAs, because my understanding was that the zoning that we have that most closely corresponds with the UDAs is the TND Ordinance. And there's no maximum floor area ratio in that, is that correct?

Mrs. Hornung: Yes.

Ms. Kirkman: So, how does that not meet the UDA?

Mr. Harvey: Well, the TND zone allows residential and commercial in that zoning category. The current R-3 zoning category could potentially meet some of the UDA requirements if you were to develop a townhouse neighborhood in the R-3 zoning because it allows seven units an acre on a cluster subdivision. Our commercial zones, the existing FAR, the only ones that would essentially meet it could possibly be the B-1 zone and possibly the B-3 zone, the RBC zone. So those could potentially meet them but the maximum is pretty close to the minimum allowed by the UDA legislation.

Ms. Kirkman: Except for the TND which has no maximum.

Mr. Harvey: Correct. It has no maximum FAR. And then the TND zone, it would meet the requirements for the UDA with the exception of multi-family dwellings because right now the TND zone is capped at ten units an acre and under the UDA legislation for multi-family has to be a minimum of 12 units per acre.

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Ms. Kirkman: If they use multi-family.

Mr. Harvey: Correct. But getting back to this ordinance, this ordinance is focused on commercial and industrial floor area and how much square footage can be developed on a specific piece of property given those individual zoning categories.

Ms. Kirkman: And in land use planning, you basically have an option of building up or building out. And higher floor area ratios and higher residential densities are a way to build up versus sprawling out. In Spotsylvania and Prince William County where there are some districts that have higher floor area ratios, do we know what percentage of their land area is zoned for those? So, do they have a lot of land that's zoned for these higher floor area ratios or is it a smaller amount of land and that's why it's zoned for these higher ratios?

Mrs. Hornung: I don't have that information for you, how much area they have zoned in each district.

Ms. Kirkman: I think that would be helpful to understand. And related to that, the other thing that... I know you're not going to know the answer to this off the top of your head but I think it would be helpful information to understand the consequences of changing this ordinance. Is looking at our current zoning... and I think we may even have some of this from the work that was done on the Comprehensive Plan already... under our current zoning map and our current land use map, with the current definitions of floor area ratio, how much square footage we have for commercial, and then how much we would have under this proposed ordinance, from both the zoning and from a proposed land use.

Mr. Howard: Just commercial? Or would you want to look at office, industrial and (inaudible).

Ms. Kirkman: Well, I'm saying that this whole category in terms of...

Mr. Howard: Okay. I think that's actually a good comparison to make.

Ms. Kirkman: ... what's listed here to understand what we're potentially creating if we move to these higher floor area ratios.

Mr. Howard: And that's one of the reasons why Mr. Johnson is here, to help us understand from an economic perspective, you know, from your opinion. So, maybe if we can invite you to come up and just introduce yourself Brad and tell all the folk at home who you are.

Mr. Johnson: Good evening Mr. Chair, I'm Brad Johnson from Economic Development. Thank you for inviting me here tonight.

Mr. Howard: So, have you had a chance to look through some of this proposed floor area?

Mr. Johnson: Yes sir.

Mr. Howard: Okay. And, from your perspective, from an economic perspective, which is why we asked you to come here, are there benefits to this or are there issues that could actually impact our local economy here by doing this? In a negative way... negative or positive.

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Mr. Johnson: Well, I was thinking about the negative side while I was sitting out here. Certainly as you increase the intensity of the use, the developer is still going to have to comply and deal with issues such as traffic studies and water and sewer is available, are water and sewer going to meet his higher intensity of use. So that certainly would come to mind. Mrs. Hornung indicated how I could speak on behalf of the developers, I'd just like to clarify I can share with you what the developers have told me.

Mr. Howard: Right, we know you don't represent any developers.

Mr. Johnson: Right, right, exactly. But we do hear this from time to time when the development community comes in, particularly on office. Where if they have a given size building in mind that they would like to develop, we do hear from them that, well, up in Prince William I could build this on seven acres of land whereas if I tried to build it down here I'd have to go to nine acres of land. And it's usually in our discussions; that's very early in their process so there's not much in the way of facts and figures to actually sit down and do a comparison of how we would rate with regard to Prince William or Spotsylvania. But that top does come up and we, of course, in Economic Development want to make ourselves as competitive as we can in the marketplace.

Mr. Howard: Right. So, is that one of the reasons that... I'm thinking, I don't know why I'm thinking of Quantico Corporate Center; maybe because that was a piece of that that we were going to speak to tonight... but is that one of the reasons why they would have had to take so much land. It seems like they did spread out because they've got some great buildings and I know they're all occupied and there's a need to have more of those buildings.

Mr. Johnson: That's correct. In comparison to an adjacent county I think...

Mr. Howard: Prince William as the example.

Mr. Johnson: That's correct. They would need more land here for a given size building than they would in another jurisdiction with a higher FAR.

Mr. Howard: Okay.

Mr. Hirons: Mr. Johnson, is that particularly true for Quantico Corporate Center, because don't those buildings also have some sort of setbacks that require more land because of the sensitive stuff that goes on there?

Mr. Johnson: And that's true too.

Mr. Howard: Oh yeah, there's a lot of other RPA issues there.

Mr. Johnson: That's true; there are the increased setbacks required if you're leasing to a federal agency. And sure, the more land that you eat up then you're going to have to go up and you're still limited by that FAR of how many floors that you can put in. So if you have to have an 80 foot setback, for example, you can't build there; you have to go up just to get a .4 FAR. And I understand there are economies of scale and building buildings. I'm not an expert so I can't tell you for certain what those economies of scale are.

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Mr. Fields: Brad, thanks for coming. Can you give us in general your perception of what types of buildings or businesses generally seem to or would like to have a higher density available in Stafford versus other types of uses or businesses?

Mr. Johnson: Based on my experience in the Economic Development office, most of our comments have to do these days with office space.

Mr. Fields: So, it's primarily the builders of office space would like to be able to get more intensity on their parcels.

Mr. Johnson: Those are the ones that have been bringing that up the most to us.

Ms. Kirkman: Mr. Johnson?

Mr. Howard: Go ahead Ms. Kirkman.

Ms. Kirkman: Have we lost any office projects because of this?

Mr. Johnson: That's hard to say. We don't really have a running tally on something like that. We get asked that a lot and we wish we could tabulate that but it's a little hard to say. I personally have not had an experience where I've talked with one of these developers and had them ultimately build the same project someplace else. But that's just my own experience.

Ms. Kirkman: And is there a shortage of office space in the County right now? What's the vacancy rate?

Mr. Johnson: I don't have the vacancy rate off the top of my head, but we start getting into classes of office space. And I know the class of office space that we're trying to attract these days is the class A office space, but I don't have a vacancy rate at my fingertips. I can certainly get that for you.

Ms. Kirkman: Yeah, that'd be helpful.

Mr. Johnson: I can certainly do that.

Mr. Howard: Are there any other questions for Mr. Johnson? Well, we do appreciate you staying with us till this late hour. I apologize that it took us this long to get to item 3, but thank you very much; appreciate it.

Mr. Howard: Certainly, not a problem.

Mr. Fields: Mr. Chairman, I have another question just in general for staff or whoever has the answer.

Mr. Howard: Yes.

Mr. Fields: Has Spotsylvania had their... you know, obviously I'm a little surprised that their densities are so high. Is that a fairly recent development in their Zoning Ordinance or have they had those higher densities for a long time? Does anybody know?

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Mr. Howard: I don't know if staff can answer that but keep in mind, Mr. Fields, Ms. Kirkman asked a very good question in terms of where are the areas designated (inaudible).

Mr. Fields: I agree with both of those things. Is this something new or something that they've done for ten years, fifteen years, a month? And, yeah, how much total land area are we talking about.

Mr. Howard: Right, so that's a great question. We would want that answer as well, Mrs. Hornung. I know you can't answer it now but for the next meeting, if you could get that information that would be very helpful.

Mrs. Hornung: Okay, let me...

Mr. Howard: Repeat the question.

Mrs. Hornung: ... repeat?

Mr. Fields: The question is, in Spotsylvania's FAR numbers which are considerably higher than Stafford's, is that a fairly recent development in their Zoning Ordinance or has that been in place for a long time? When did that come into place?

Mrs. Hornung: No, I actually understood that question. I was there four years ago. I hadn't been intensely involved with any of their ordinance changes since coming to Stafford. But I don't recall, but I'd have to go and research. And when I was there, I was there for about five years and we didn't really change any of the FARs for the non-residential zoning districts. But that doesn't mean...

Mr. Fields: Were these numbers in place then or do you not recall?

Mrs. Hornung: I would have to compare with the older ordinances of '06 and earlier, but I don't have that information.

Mr. Fields: Mainly I'm just saying have they done this in response to like getting pro-active on the UDA legislation or things like that, or has this been just their policy for a while? Because that's significant, significantly different for a county that essentially follows a fairly similar pattern.

Mrs. Hornung: So, would you like me to find out if they changed any of their FAR in the last two years or...?

Mr. Fields: When these numbers came into effect. Not if they changed but when these specific numbers that we see here on this table came into effect in Spotsylvania County.

Ms. Kirkman: And to clarify, if you need it Mrs. Hornung, my question was a bit different. And my question was what percentage, based on zoning, the existing zoning, or based on their land use map, what percentage of their land area is devoted to each of these categories.

Mrs. Hornung: And you want that for Spotsy and... Spotsylvania and Stafford, right?

Ms. Kirkman: No. Well, Stafford's a little different. We can set aside Stafford.

Mrs. Hornung: Okay.

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Ms. Kirkman: You've given us a comparison table of floor area ratios. It's important to understand the context of those floor area ratios which is how much land area in those comparative counties is devoted to those land uses.

Mr. Howard: By category, right.

Mrs. Hornung: And then that's the category that's listed in this chart that was provided in your packet, correct?

Ms. Kirkman: Yes. The question I had for Stafford was much more specific and I think we probably already have some of these numbers from the Comprehensive Plan process which is taking our current zoning and taking the Comprehensive Plan. Under our current floor area ratios how much existing zoned square footage do we have and how much potential do we have under the land use map? And then those same numbers with what's been proposed in the ordinance. Is that...?

Mrs. Hornung: Yes ma'am. I will work with staff to make sure I have all the details.

Ms. Kirkman: And work with GIS.

Mrs. Hornung: Right, no I mean to make sure I have all the items that you specified. But that will be no problem.

Mr. Howard: Are there any other questions of staff from any other Commissioner? Seeing no signal and hearing none, thank you. This would just stay on the agenda as unfinished business Mr. Harvey.

Mrs. Hornung: And may I ask you if you would like it maybe not at the next meeting but at the following meeting? When would you like the information, given that we need the...

Mr. Howard: Well, we have until... there is some time, but not a lot of time. We only have until May 3rd. Whatever you could gather by the next meeting I think would be helpful.

Mrs. Hornung: Okay, sure. Thank you.

Mr. Howard: Thank you. Now we're up to the Planning Director's report. Mr. Harvey?

PLANNING DIRECTOR'S REPORT

Mr. Harvey: Well, Mr. Chairman, to give you a report on activities from the Board of Supervisors yesterday, they approved the T-Mobile Conditional Use Permit on Synan Road for a telecommunications tower. They also referred a zoning text amendment to the Commission regarding the P-TND zoning category for the T-1 Natural Area. We've provided a copy of that Board package for your information at your desk. And then also the Board received a presentation from the Joint UDA Committee and I believe that will be covered under the Committee Reports later on. And that concludes my report.

Mr. Howard: So, you covered the TND piece; that is what you just said?

Mr. Harvey: Yes.

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Mr. Howard: And there's a to-do for the Planning Commission on this obviously, right?

Mr. Harvey: It was referred to the Commission for the Commission's review and scheduling a public hearing.

Ms. Kirkman: Mr. Harvey, in the packet we were given I don't see the Resolution that was passed by the Board sending this to us.

Mr. Harvey: Correct. There were some adjustments that the Board made at the meeting and we haven't had a chance to catch up with that in the final version. The Board wanted to reiterate some of the wording that they were sending it for the Commission's consideration and they wanted to change some of the wording with regard to that the Board believes it may be in the public necessity, convenience and general welfare, etcetera. We will provide you with the updated Resolution once we get it.

Mr. Howard: Okay. So, technically speaking, I'm going to say we really haven't received this yet then.

Ms. Kirkman: That's correct.

Mr. Howard: So, because there will be a time associated with this, right?

Mr. Harvey: I'm just reporting on the Board's actions from yesterday.

Mr. Howard: Well, if they're listening I'm just telling them that we haven't really technically received this.

Ms. Kirkman: The clock hasn't started ticking.

Mr. Howard: The clock really hasn't started because we don't have all the information.

Mr. Fields: We have this one Resolution but there's another Resolution?

Ms. Kirkman: There's a Resolution where they send it to us and we don't have the Resolution...

Mr. Fields: What is this one? What is 11-78 on 15 February?

Mr. Harvey: The Resolution R11-03, which is in the back of the packet, was the Resolution the Board considered but they made adjustments to that Resolution.

Mr. Fields: I've got 11-78 is what I've got.

Ms. Kirkman: You're on a different item Mr. Fields.

Mr. Fields: Oh, I'm sorry. I thought we were talking about the UDA?

Mr. Howard: No, this is the TND.

Mr. Fields: TND; my mistake.

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Mr. Howard: Thank you. So, Stacie, do you have that in the notes? We're good, right? We don't have this yet.

Mr. Harvey: We'll get the Commission the finalized Resolution.

Mr. Howard: The next meeting will be great. Perfect. Okay, following the agenda, Mr. Smith, do you have any...?

COUNTY ATTORNEY'S REPORT

Mr. Smith: No report Mr. Chairman.

COMMITTEE REPORTS

7. Discussion of Conditional Zoning (Proffers) **(Time Limit: April 6, 2011) (In Committee)**

Mr. Howard: Okay, and then the Committee reports. The discussion of the conditional zoning proffers. This went to committee; it's still in committee. We have until April 6 and I don't think we are ready to...

Mr. Rhodes: Is that the handout?

Mr. Howard: Is there a handout on this one?

Mr. Rhodes: That's when we had them do the side by side (inaudible).

Mr. Howard: You're right. You want to take that Mike?

Mr. Rhodes: No, no.

Mr. Harvey: I am passing out the chart that was referred to by Mr. Rhodes. The Committee had asked for a side by side comparison of the existing ordinance language and the proposed ordinance language and how they measure up.

Mr. Rhodes: And I think that was based on the commentary we had collectively; would something be lost if you had 28-161 that was struck out. In some of the discussion we had we saw that much of it was covered...

Mr. Howard: When we met and we started to read both side by side, it really did appear as though doing away with one ordinance and adopting the other one would really give us a little bit more strength as a county but we wouldn't lose anything from the original ordinance. And we had asked staff for this meeting to provide the detail behind that so everyone would feel as comfortable as we did after we had gone through that. Is that correct Mr. Harvey?

Mr. Harvey: Yes Mr. Chairman. Also, Mr. Smith was pointing out to me that there was some question that the committee had about could you have both provisions of the state code rolled into our Zoning Ordinance. And the code provision in the state statute specifies that you have to one rather than the other. So you can't have both; you need to specify which one you're going to use.

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Mr. Howard: So, the recommendation basically of the committee was to advance this, bring it forward and adopt it, but we wanted the full Commission to take a look at it and understand it. Ms. Kirkman?

Ms. Kirkman: I do have a question and it relates to the one concern about that I have regarding the proposed changes. And that's specifically on this last, on this section that's been added, Section 28-165 which says that "...where an amendment to proffered conditions is requested by the profferor, and where such amendment does not affect conditions of use or density, the board of supervisors may waive the requirement for a public hearing..." And I'm very concerned anytime public hearings are waived for reasons of transparency and what's done. And I wanted to find out, I went to the sections of the state code that are referenced here but I can't find the section in the state code where it says this piece about the Board may waive the requirement for public hearing. So, I would like clarification from the attorney what part of the state code that's coming from. And then I wanted to make sure I understand what this means; if staff could elaborate what the interpretation of "change in use or density" means.

Mr. Howard: Mr. Harvey, can you elaborate on the definition?

Mr. Harvey: Generally speaking, a change a use would be where there was a proffer restriction that said you could or could not do certain uses. And the applicant was proposing to allow more uses than previously permitted under the proffers. That would be a change of use where, from a staff perspective, it's becoming an increasing intensity on the property. So, therefore, we would suggest it doesn't meet that threshold and would need to go back for a public hearing. Also, the question about increasing intensity, for instance, if somebody had a proffer restriction on floor area ratio but they wanted to make it less restrictive because they wanted to build a bigger building, that's increasing the intensity use of the property and therefore would not be eligible for this abbreviated review and have to go back for public hearings. That's the way we would look at it.

Ms. Kirkman: So, if a proffer, for instance, had to do with a cash proffer, I'm just going to say they proffered \$10,000 per unit, and they wish to change that proffer to \$5,000 per unit, because that does not affect the use or the density, the Board could make that change without a public hearing. Is that correct?

Mr. Harvey: That may be conceivable.

Ms. Kirkman: Or if, for instance, on a project the developer proffered to build an Olympic sized aquatic center and came back and said I want to do a golf course instead, could that occur without a public hearing? It's a recreational... they're changing the type of recreational amenity.

Mr. Harvey: That may also be something that could possibly fall under that. The statute says the Board may waive the requirement for the public hearing, so that would leave that decision in the Board's hands.

Ms. Kirkman: Thank you. And Mr. Smith, were you able to find the section of the state code?

Mr. Smith: Yes, Ms. Kirkman. It's based on Section 15.2-2302 of the state code.

Ms. Kirkman: Oh, 2302; okay.

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Mr. Howard: Are there any other questions of staff or anyone? No? Okay. So, again, this was designed to get it in front of the full Planning Commission and the thought was we could actually dissolve that subcommittee and then just bring this into our work session, you know, and begin to work with it here at the Commission level. Is that correct Mr. Rhodes?

Mr. Rhodes: Yes.

Mr. Howard: Okay. So, Mr. Harvey, if we can, get this on the next New Business opportunity and agenda and we can start hashing through that.

Mr. Harvey: So Mr. Chairman, you would want it to be under New Business?

Mr. Howard: I think so. Give everyone a chance to... what's our timeline on this?

Mr. Harvey: The time limit is April 6 for your public hearing and a final recommendation. The regularly scheduled meetings in March are March 2nd and March 16th.

Mr. Howard: I would get it on the 2nd, March 2nd's meeting and then that gives all the Commissioners a chance to read through it a little more thoroughly.

Mr. Harvey: I believe April 6 is your first meeting in April.

Mr. Howard: Yeah it is. So we'd probably have to take action or do something at the next meeting, but this is not the appropriate meeting to do that because it's brand new to everybody.

Mr. Harvey: Okay. We will put it on for New Business.

Mr. Howard: Right.

Ms. Kirkman: And, Mr. Smith, I just quickly looked through the state code. If you could point out to me the specific section about being able to waive the public hearing?

Mr. Smith: Under 15.2-2302 it says "However, where an amendment to proffered conditions is requested by the proffesor, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of conditions created pursuant to § 15.2-2298 or 15.2-2303."

Ms. Kirkman: And since that's a may and not a shall, does that mean that the locality has any flexibility in including or not including that in their ordinance? In other words, can the locality de facto decide it never is going to do that?

Mr. Smith: I would probably like to think about that one.

Ms. Kirkman: Sure.

Mr. Howard: Yeah, that's a good question. I think I know the answer but I won't spoil it. But that's a good question. Okay, great. So that will go under New Business. And then there was discussion of privatized liquor sales.

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8. Discussion of Privatized Liquor Sales (Time Limit: April 6, 2011) (In Committee)

Mr. Rhodes: We've resolved that.

Mr. Howard: We've resolved that. The State Legislature helped us with that one so that's not going to happen. Then there's the discussion of the TDR which was in a joint committee and I'm not sure who wants to report on that.

9. Discussion of Transfer of Development Rights (TDRs) (Time Limit: April 6, 2011) (In Joint Committee)

Mr. Harvey: Mr. Chairman, they're still searching for a meeting date.

Mr. Howard: Oh, okay. The committee has until April 6; we better get going. And then the Telecommunication Plan update? I know there was a group working...

10. Telecommunications Plan Update

Mr. Fields: We're meeting tomorrow.

Mr. Howard: You meet tomorrow? Okay. Good, we'll get an update at the next meeting. And then there was a meeting also on the Implementation Plan for the Comprehensive Plan, right? That's what that's referring to?

11. Implementation Plan Update

Mr. Harvey: Yes sir.

Mr. Howard: Okay. And, Mr. Harvey, I don't know if you want to give a quick overview of that?

Mr. Harvey: Staff met with the committee members, Mr. Howard and Mrs. Hazard, and went through a draft document which put together a list of the tasks involved with the Comprehensive Plan and proposed timelines. The document was not complete and there was some discussion about changing the format of how it appears. So that's something staff is continuing to work on and we'll get back with the committee to get more specifics since we've gotten direction on how to proceed.

Mr. Howard: Okay. And then there was a joint UDA Committee update and actually there was action I think taken at the Board level as well on that. I'm not sure who updates us on that.

12. Joint UDA Committee Update

Mr. Hirons: I have an update. I believe there's a presentation available to us that was given to... the power point presentation that was given to the Board of Supervisors. I was asked to kind of go through it as well so computer please. I apologize, I didn't have a lot of time today to go through these slides to make sure I hit all the points so I'm just going to do my best here. Computer please? A little bit of the background; as you know the Board, through its passing of the Resolution to adopt the Comprehensive Plan, included conditions that removed two UDAs and created a joint committee made up of three Board members and two Planning Commission members. From the Planning Commission it was myself and Mr. Mitchell. Our task was to recommend the allocation of the 4,000 units that

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made up the Stafford Station UDA and the Brooke UDA and reallocation those 4,000 dwelling units. We did have several committee meetings, a few committee meetings of just us. We decided to hold a couple public workshops to get some public input. The workshops ended up being held on January 25th and February 7th; one kind of in the north side of the County, it was actually located here in a building adjacent to the County Administration building. The second one was originally scheduled for the 26th; it was snowed out so we ended up having it February 7th down at the library at England Run. And both of those workshops were fairly well attended, roughly 50 people at each so 100 people altogether provided input; 100 minus a few that actually participated in both events. We also posted a survey online. The County staff... again, I want to commend the County staff for putting up that survey, tabling the results and providing those results to us... the online survey kind of mimicked the actual activities that the folks did at the public work sessions, allowed them to kind of allocate dwelling units throughout the County and as they saw fit type of thing. There probably could have been improvements but, again, the County staff did a great job putting that together and getting it up there. And I think we got some valuable feedback. I believe in our packet we have information about the survey results. The committee itself, we met again on the 9th...

Mr. Howard: Mr. Hiron, how many people participated in that website survey? Did they say?

Mr. Hiron: Boy, I should have had that prepared. I believe Mrs. Baker can answer if I can't. There were... do you have it offhand?

Mrs. Baker: Yes. There were 157 total responses but we did have to go through those and basically, I hate to use the word weed out, but the ones that did not fill in complete information, we did that. So we actually had a final response of 76 that we used.

Mr. Howard: Seventy-six respondents. And then at each session there were how many people?

Mrs. Baker: We had 40/41 at the first and about 60 at the second.

Mr. Hiron: I recorded as being the first meeting, as it was reported to us, there were 45; at meeting two there were 61.

Mr. Howard: Okay, thank you.

Ms. Kirkman: Of the 76 responses, how many of those were from people that also participated in the meetings?

Mrs. Baker: Twenty survey respondents also attended a UDA workshop.

Ms. Kirkman: So we had about 56 unique responses, so to speak.

Mr. Hiron: Right.

Ms. Kirkman: Thank you.

Mr. Howard: How many Planning Commissioners filled out the survey? I'm just kidding.

Mr. Hiron: Can we go back to the computer please? Let's see... we met on the 9th, the committee did, to give our final recommendation for going forward to present to the Board of Supervisors. And

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yesterday the Board of Supervisors again received our recommendation and they saw fit to make their adjustments and provide us with their recommendations which I believe now will be coming before us. Next slide. Oh, okay; I wasn't sure if we had this information. This was actually what came out of the committee. We reinstituted the Boswell's Corner UDA; there was significant support to reinstitute Boswell's Corner, 600 units. We added 250 units to Leeland Station bringing the total in Leeland Station up to 1,000 units. There were 1,600 units that were to be allocated between Brooke Station and Courthouse. The allocation differences there were between 750 and 1,000 to Brooke Station and between 680 and 850 to Courthouse. So if we, as the Planning Commission, recommend that Brooke remain at 750 dwelling units, then the Courthouse will increase to 850 and vice versa. If we recommend 1,000, Courthouse would be 600, presuming nothing else changes. We also recommended 1,300 units in Southern Gateway which actually ended up creating a new UDA called South Gateway East. And the purpose of the new UDA itself was because our recommendation was to go on the east side of 95. There is actually a townhouse development that is prepared or ready to go to construction I believe it was of 700 units and that made up enough dwelling units to be one UDA. That was recommended by Supervisor Crisp, and the other 600 to be another area or possibly a part of that to make up that one UDA of Southern Gateway East. And then there was a remainder of 250 units that we added to Centreport. Next slide.

Ms. Kirkman: Excuse me Mr. Hirons. Could you go back to that slide?

Mr. Howard: Not that slide, the other slide. Computer please?

Ms. Kirkman: On here it says the committee voted 5 to 0 on these recommendations? Are you sure that was the committee vote on putting a UDA in Brooke?

Mr. Hirons: Mr. Mitchell, I don't recall specifically but I believe it was.

Ms. Kirkman: From what I saw reported, it was actually a 3 to 2 vote. Didn't Supervisor Snelling and Woodson vote against placing a UDA in Brooke?

Mr. Hirons: I don't know. Mr. Harvey?

Mr. Harvey: Yes, Mr. Chairman and Mr. Hirons, my recollection is that there was a 3 to 2 on the issue of whether to put a UDA in Brooke, however, the overall vote from the committee was 5 to 0 on the whole.

Mr. Hirons: The final passage of the recommendation for Resolution I believe it was 5 to 0.

Mr. Harvey: Yes.

Mr. Hirons: Next slide. With regards to the Stafford Station area, the Widewater area, the UDA at Widewater, we recommended that we don't re-establish that UDA. There was a significant amount of public input that suggested that would be a good place for a UDA. There were a lot of green dots placed; that was the exercise that was done. But again, we took the position of it's probably in our best interest of the County not to re-establish that UDA at this point. We did recommend out of the committee to bring the USA boundary back to where it was prior to the... with regards to the Widewater area... back to where it was prior to the December 14th vote of the Board of Supervisors.

Mr. Howard: So, to contract it excluding...

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Mr. Hiron: The Widewater area.

Mr. Howard: ... yeah, the Widewater UDA.

Mr. Hiron: And the purpose of that was to not leave this blank slate of an approved USA out there. We did recommend further study in this area because there was so much significant public input of this area might be a good area to make some use out of, we recommended to the Board that there be further study and discussion on how that area might be used in the future. These were the committee UDAs; obviously the blue dots are the new UDAs. The one up by Boswell's Corner is a blue dot and considered new out of this process, as well as the Brooke one. The Southern Gateway is down on the east side or southeast side I suppose of 95. There was a lot of discussion indicating that seemed to make sense. There was significant resistance to adding more density to the west side of 95 because of the issues of 17, but over there on the east side, the general thought was if there's a lot of folks that are using 95, they have easy access to 95 at that point without adding a lot of congestion to 17 although you can never get away from that.

Ms. Kirkman: I have a question regarding that. Could you please explain how the Brooke UDA, the new Brooke UDA, is different than the old Brooke UDA that was removed when the Board received a unanimous vote for approval of the Comprehensive Plan?

Mr. Hiron: I don't believe there are any significant changes outside of the fact of a possible additional 250 dwelling units being placed there. So it was the will of the Supervisor who represents the area to want the Brooke UDA re-established. There was significant public input that supported that idea; therefore, it was the will of the committee and the decision of the committee to re-establish the Brooke UDA however acknowledge there was resistance to it. It wasn't overwhelming support from the committee members itself to re-establish that Brooke UDA.

Ms. Kirkman: With the only difference being the possible addition of additional 250 units. Thank you for that clarification.

Mr. Howard: Mr. Hiron, there was also some discussion I think on that particular UDA, as was there previously, about the Transfer of Development Rights.

Mr. Hiron: Yeah, Supervisor Milde requested that the same language that was a part of the UDA prior to the December 14th action by the Board regarding Transfer of Development Rights to make up all of the dwelling units within the Brooke UDA must come from Transfer of Development Rights. And we specified areas; it's the same area we actually voted on and approved here at the Planning Commission. I don't remember what they were specifically but it was general east of 95 and south of the CSX tracks, or something along those lines.

Mr. Howard: Yeah, there was a specific line.

Mr. Hiron: We can get specific on that. Next slide. So, the Board got their presentation yesterday and they voted 5 to 2 with the recommendations as you see below. I actually attended the Board of Supervisors meeting yesterday to witness firsthand how they accepted this and what their direction was going to be to us. They retained the 250 units to Leeland Station, the same allocation for Brooke and Courthouse, that 250 for Centreport that was recommended out of the committee. And then they recommended removing the 600 units from Southern Gateway, the new UDA, East Southern Gateway. The 700 units see there represent that townhouse community that again Supervisor Crisp point out we

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could take credit for as a UDA. That left over 1,200 units because... I'm sorry, they also eliminated Boswell's Corner. There was a lot of discussion while we've already taken action accepting the Marine Corps' plea to not have additional residential units in Boswell's Corner due to the proximity to the explosive ranges up there. And so they recommended removal of the Boswell's Corner UDA, again, which it left over those 600 units plus the 600 units from the Southern Gateway UDA; so a total of 1,200 units and their recommendation on sending it onto us was to add them to George Washington, Centreport and I believe the direction is left up to the Planning Commission to allocate those between those two UDAs. Here's the information about Brooke; in particular, this was requested by the Supervisor that represents that area that all residential development should be tied to retirement of development rights in the specified area. They retained their recommendation for bringing back the USA boundary up in Widewater. They had a slight discussion about this bill that was making it through the General Assembly that made UDAs optional and what should happen if that should become law. I believe that was actually killed in a State Senate committee yesterday so that's probably not particularly relevant any longer. Is that the last slide? Okay, here are the Board's UDAs. Pretty much their end result is simply adding a UDA at Brooke. Our deadline per the Resolution that was passed on December 14th is April 1st. We are to conduct a public hearing on the amendments giving back our recommendations from all this to the Board and the Board is to take action by June 21st to adopt within the state required timeline.

Mr. Harvey: Mr. Chairman?

Mr. Howard: Yes.

Mr. Harvey: At your desk, staff has provided you a schedule for the Commission's consideration to try to meet that April 1st deadline. The title of the schedule is UDA Planning - Allocation of 4,000 dwelling units, optional schedule to meet April 2, 1011 deadline. And staff would not that the way the schedule is set up is we would have to look at establishing and calling a special meeting for next Wednesday to consider a number of issues, and I'll get into those issues in a minute, to help formulate the recommendations. The meeting on March 2nd, which is your regular meeting, would be to finalize the meeting recommendations. We would have to get the ad to the paper on Wednesday, March 9th. We would consider cancelling the meeting on March 16th; right now we currently don't have any public hearings that are scheduled for that time slot and that meeting would be moved to March 30th which would be your public hearing on the recommendations of the Board plus the additional items that the Commission has to consider. From the staff perspective, the issues we see that the Commission would need to consider are specific dwelling unit numbers for the Brooke, Courthouse, George Washington and Centreport UDAs; also, the types of dwelling units to be added to each of these areas. And then additional public facility needs; the current Comprehensive Plan identifies certain needs for schools and other types of public and capital facilities within these UDAs. Also, identifying where and if these UDA boundaries will be expanded for the existing UDAs and reaffirming where the Brooke UDA boundaries may go. Some additional considerations to mention would be what to put for the land use for the former Stafford Station UDA. It is currently considered to be undesignated since it was removed from the plan but there was no underlying land use designation. So we need...

Mr. Howard: What was the designation before the proposed UDA?

Mr. Harvey: Well, under the old Comprehensive Plan it was considered to be agricultural. Under the current plan, the surrounding area is agricultural/rural. That would be something for the Commission to consider. Also, there was a connection between that UDA and the rest of the Urban Service Area by

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a connection of suburban area and parkland. Based on the recommendation of the Board we were going to be moving the Urban Service Area back to the pre-Comp Plan adoption location and that would mean you'd have the suburban area sitting out there that's not in the Urban Service Area. So that would be something that the Commission would also need to consider in its recommendation; whether to remove that designation and maybe redesignate it for ag/rural or some other use. What staff would suggest to the Commission is you take a look at this schedule and see if you agree with it. But also, if you do agree with it, then we would try to come back to the meeting next Wednesday with sort of a strawman for the Commission to consider to start the discussion.

Mr. Howard: So, what methodology would you use, Mr. Harvey, as an example on the types of dwelling units? Would you use the same percentage that exists today or...? You also want to somehow determine is there a need for a new UDA boundary, right? And one of the ways to do that is what are the types of dwelling units and how much land area does that take up?

Mr. Harvey: Yes, Mr. Chairman. The first thought, and we haven't really discussed this at the staff level yet because things are moving pretty quickly, but my first thought is that our Comprehensive Plan was reviewed by Dr. Fuller and the study was done and he found that the Comp Plan was fiscally and economically sustainable based upon a certain unit mix assumed in the plan. So, from a discussion point I was thinking we'd throw that out as using the same types and numbers of units that were previously identified in the plan and maybe disbursing them out to the other UDAs as a starting point for discussion. Because then, in theory, your plan is still fiscally viable. As far as...

Ms. Kirkman: Excuse me, I thought he concluded that there would be a net deficit under the... I think it was like 1.4 million or something a year.

Mr. Howard: That's not my recollection.

Ms. Kirkman: It's been a while since I looked at that.

Mr. Harvey: We can go back and pull that study and provide it to the Commission for their next meeting.

Mr. Howard: Yeah, that would be helpful.

Mr. Harvey: Also, as far as the location of the UDAs, we got feedback from the public during the work sessions as to where they thought the UDAs might be logically expanded so we can kind of look at that and map those areas if we think those UDAs need to be expanded based on the increase in dwelling units. The thing that we would not be really clear on is additional public facility needs. We may have to consult with some other county agencies and get some more feedback from the Commission. That would be sort of our first draft starting point. We'll throw that out for discussion next week hopefully for the Commission to...

Mr. Howard: There is a methodology, Mr. Harvey, that exists I think with the type of proposed dwelling unit and the demand it would place on the County, isn't there, in terms of schools and other support?

Mr. Harvey: I believe there was some methodology with that when the Comp Plan was first put together. So, in theory, that methodology still stayed consistent. So, I guess, say the Stafford Station

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UDA had some public facilities, then we would have to consider whether they would need to be moved to one of the other UDAs.

Mr. Howard: Correct; exactly right. Okay.

Mr. Hirons: Mr. Harvey, can I ask, what is the full scope of our work, of our capability? And the reason I ask is I'm not sure if there's a lot of agreement or there might be some opinions that the Board may be different than what some of the folks on the Commission may think and what reallocation moving of UDAs are we able to do or recommend? We can't do anything but we can recommend. It's my reading of the Resolution they're looking for our recommendation so we pretty much, lack a better term, have a clean slate. We can make changes as we see fit as a Commission.

Ms. Kirkman: Well, I would like to ask that same question but in a little more technical way, which is reading this Resolution and the materials that came with it, I have a notion of what I think is going on but I want confirmation from the attorney. Is the Board initiating the Comprehensive Plan amendment or is the Planning Commission?

Mr. Smith: Ms. Kirkman, in this case the Board has set specific Comprehensive Plan amendments to the Planning Commission for its recommendation and the Commission needs to provide the Board its recommendation on those amendments. But the Planning Commission can also provide its recommendations.

Ms. Kirkman: Who is initiating the amendment because that affects the process that we're under? If it's the Board initiating it, I would like to see the text amendment that they're sending to us and the map amendment, which I did not see with the Resolution.

Mr. Smith: Well, the Board has initiated I believe these particular amendments and sent them down for the Planning Commission's recommendation. And the Planning Commission can also provide its own recommendations outside of these issues.

Ms. Kirkman: So, where are the text amendments to the Comprehensive Plan? I mean, that's what you do when you initiate an amendment; you create a text amendment and I didn't see those in the Resolution which I think gets to the point that Mr. Hirons is inquiring about.

Mr. Howard: I'm just going to chime in as the Chairman and here's my understanding. It's on page 3 under number 6; "in the event the joint committee provides its recommendations in writing to the Board and the Commission on or before February 15, 2011, the Commission shall, on or before April 1, 2011, conduct a public hearing on the proposed Plan amendments for the purpose of making its recommendation to the Board" and then it goes on further to 7 that "upon receipt of the Commission's recommendations regarding the proposed Plan amendments to redistribute the 4,000 dwelling units previously proposed for the Stafford Station and Brooke Station UDAs, the Board will conduct a public hearing on said proposed Plan amendments on or before June 21, 2011, in order to meet the statutory deadline for the adoption of UDAs in Stafford County". My interpretation of that is the only playground, if you will, is the 4,000 dwelling units that this subcommittee worked on with public input that we could sort of kind of play in that space only. That the rest of the Comprehensive Plan has been adopted, it's done...

Mr. Hirons: Yeah, that's truly (inaudible).

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Ms. Kirkman: Right. I understand it's the 4,000 number that we're looking at.

Mr. Howard: Right. And I'm not reading that we can, to Mr. Hirons' question, create a new UDA or do something... in other words, I don't believe Stafford Station is back on the table or could be because this to me says no, we're basically being told and directed this is...

Mr. Hirons: For the record, that's not my (inaudible).

Mr. Howard: No, no... I'm just putting it out there.

Ms. Kirkman: My understanding though is at this point we are operating under Resolution R11-78...

Mr. Howard: I'm under the same frame of mind on that.

Ms. Kirkman: So, that's what we're working off and you're reading from a different Resolution. So let's go to R11-78 and what I'm looking for there is it said the Planning Commission is requested to consider amending the Comprehensive Plan. And to me that seems to indicate that the Board is doing what it is certainly empowered to do under Section 15.2-2229 regarding amendments to the Comprehensive Plan, which is to direct the local Planning Commission to prepare an amendment. So, I believe that's the process that we're operating under. Is that correct Mr. Smith?

Mr. Smith: Well, I think it's both that the Board has referred these specific amendments for the Planning Commission's consideration and recommendation and is asking the Planning Commission to also provide its recommendation.

Ms. Kirkman: Well, an amendment needs to have text with it and, in this instance, a map as well. And I did not receive that with this Resolution. Is there some part of the Resolution that we're missing? So we need to prepare the map, we need to prepare the text, which then means it is the Planning Commission initiating the amendment; which I believe that then gives us the authority to move forward whatever amendments we choose to do so... within the 4,000.

Mr. Howard: Yeah, I still go back to the original Resolution which is R10-377. Again, 6 and 7 clearly are what initiated the next Resolution which is the one Ms. Kirkman's referring to which is R11-78. But again, it's again those 4,000... and I'm in the same place you are Ms. Kirkman... it's within those 4,000 dwelling units that have been designated... Well, the Urban Development Areas are designated at this point in my mind based on both Resolutions. And we, as a Planning Commission, are charged with making sure the right dwelling unit type, the right UDA boundary is appropriate, and any other county resources that weren't considered because the UDA sizes have changed. So it's boundaries, housing type and any other county resources that weren't factored in need to be factored into these UDAs. That's my understanding.

Ms. Kirkman: And I have to say respectfully Mr. Chair I disagree with that understanding because of the way that Resolution R11-78 was worded. You will note that nowhere in here does the Board reference the general welfare, convenience, yada yada yada language, which typically goes with the initiation of an amendment. They also did not include any text amendments for our consideration or any map amendment. So, I think that that's really putting this in the realm of the Planning Commission initiating the amendments which I think does give us the authority to put forward whatever the will of the Planning Commission is.

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Mr. Howard: Well, Mr. Smith can tell us at the next meeting, but I think we'll move on. We'll just agree to disagree on that.

Ms. Kirkman: And while we're discussing these technical details that really have to do with the procedures, I did want to also point out that there is a flaw in the Board's Resolution in directing us to have this back to them by April 1... April Fool's Day..., 2011. And that is they do not have the authority to direct us to have it back to them by April 1st. Again, referring to the state statute regarding amendments, they have to give us at a minimum 60 days and 60 days brings us to April 10th.

Mr. Howard: Duly noted. Again, I would go back to the original Resolution which was R10-377. It's very clear in there what the charge was with this whole process.

Ms. Kirkman: But Mr. Chair, the Board's Resolution can be as clear as crystal, but that doesn't mean that it's conforming with the state statute.

Mr. Howard: Okay. So, Mr. Harvey's recommendations are I think very good and I appreciate you putting all that time and effort into it. And that was a quick turnaround because it just happened last night. So, is there a motion from this Commission to schedule to meet on a special meeting with the sole purpose of meeting for this UDA discussion and the Comprehensive Plan on February 23rd?

Mr. Rhodes: So moved.

Mr. Howard: Is that seconded?

Mr. Mitchell: Second.

Mr. Howard: Any discussion?

Mr. Hirons: I do have a question. Was the motion to adopt this entire schedule or just schedule a meeting next Wednesday, February 23rd?

Mr. Rhodes: The 23rd.

Mr. Howard: Just the 23rd. Did you want to adopt the whole schedule?

Mr. Hirons: No I didn't. I was going to oppose it if that was the case.

Mr. Howard: Okay, thank you. Any other discussion?

Mr. Harvey: Mr. Chairman, just to make the Commission aware, due to advertising requirements we really couldn't make a March 16th hearing date unless a full amendment was decided on and put forward for authorizing a hearing next week.

Mr. Howard: We'll have to see what happens.

Mr. Harvey: Elsewise, we are needing a special meeting for that purpose.

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Mr. Howard: Right. Alright, all those in favor of the motion on the table which is to schedule a meeting for February 23rd, specifically for the agenda would be the UDA Planning and Allocation of 4,000 dwelling units as it relates to the Comprehensive Plan signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed? The motion carries 7-0.

Mr. Harvey: Mr. Chairman, we have reserved this room for that meeting.

Mr. Howard: Thank you.

Mr. Harvey: What time would you prefer to start?

Mr. Howard: I'm okay with the same time if everybody else is. Or do you want to do it a little bit later, give everybody a break, or earlier?

Ms. Kirkman: By same time you mean...?

Mr. Howard: Six thirty.

Mr. Rhodes: Six thirty.

Mr. Howard: Yeah, 6:30 is fine.

Mr. Harvey: Yes, Mr. Chairman, we'll send notice to the media about the announced meeting.

Mr. Howard: Okay. That's it. Thank you.

CHAIRMAN'S REPORT

OTHER BUSINESS

APPROVAL OF MINUTES

January 19, 2011

Mr. Rhodes: Minutes.

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Mr. Howard: Oh, we have minutes. We do have minutes from January 19th. Is there a motion?

Mr. Mitchell: Motion for approval of the January 19, 2011 minutes Mr. Chairman.

Mr. Rhodes: Second.

Mr. Howard: Any discussion on the minutes? All those in favor of approving the minutes signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Mitchell: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 7-0.

Ms. Kirkman: And Mr. Chairman, regarding the former discussion, can the attorney get us something in writing about his interpretation regarding the initiation of the amendments and the timeframe before our meeting next Wednesday?

Mr. Howard: Mr. Smith, could you see if you can make that happen?

Mr. Smith: Yes Mr. Chairman, yes Ms. Kirkman.

Ms. Kirkman: Thank you.

Mr. Howard: Thank you. That's it; the meeting it adjourned. Thank you.

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 9:46 p.m.